

“Lessons from shared management in cohesion, rural
development and fisheries policies”

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Final report

Annexes

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Acronyms

AA	Audit Authority
AIR	Annual Implementation Report
CA	Certifying Authority
CAP	Common Agricultural Policy
CF	Cohesion Fund
CMEF	Common monitoring and evaluation framework
CSG	Community Strategic Guidelines
DG	Directorate-General of the European Commission
DG Agri	European Commission Directorate-General for Agriculture and Rural Development
DG Empl	European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities
DG Mare	European Commission Directorate-General for Maritime Affairs and Fisheries
DG Regio	European Commission Directorate-General for Regional Policy
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EAGGF	European Agricultural Guidance and Guarantee Fund
EC	European Commission
EFF	European fisheries Fund
EIB	European Investment Bank
EIF	European Investment Fund
ERDF	European Regional Development Fund
ESF	European Social Fund
EU	European Union
FIFG	Financial Instrument for Fisheries Guidance
GDP	Gross Domestic Product
GROCO	Operational Programme Coordination Group
ICT	Information and Communication Technology
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
ISAR	Internal Synthesis and Assessment Report
MA	Managing Authority
MC	Monitoring Committee
MS	Member State of the European Union
NRN	National rural Network
NSP	National Strategy Plan

NSRF	National Strategic Reference Framework
OP	Operational Programme
PA	Paying Agency
PPP	Public-Private Partnership
RDC	Rural Development Committee
RDP	Rural Development Programme
RDIS	Rural Development Information System
SFs	Structural Funds
SMEs	Small and Medium-sized Enterprises
TEC	Treaty establishing the European Community
VAT	Value Added Tax
WFS	Workflow system

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Annex 1 - Dimensions of shared management system and related issues

Code	Dimension / Issue
Programming	
P1	Different layers of strategic and programming documents - role of Commission in negotiation of programmes
P2	Content/Level of detail in programming - measures or priorities, degree of specification, flexibility of definition of priorities
P3	Programme balance and mechanisms to ensure delivery of EU priorities - earmarking, minimum by axis, at level of programme
P4	Programme modification rules
P5	Innovative approaches - mainstreaming versus specific implementation arrangements
Implementation	
I1	Compliance with EU legislation
I2	Use of technical assistance
I3	Fostering technological and non-technological innovation
I4	Economic conditionality – conditions linked to outputs and results
I5	Financial conditionality – conditions linked to expenditure
I6	The role/impact of eligibility rules (national versus EU level, detailed versus flexible, public versus total expenditure, reimbursable VAT etc) and the clarity of the eligibility rules
I7	Proportionality
I8	Financial engineering
I9	Transition between programming periods
Reporting, monitoring and evaluation	
R1	Reporting - level of detail of information on operations supplied by member states; general reporting requirements
R2	Monitoring - degree of detail, fixed versus flexible lists of indicators, focus on outputs or outcomes, comprehensive or selected interventions, functioning of the Monitoring Committees (composition, rules etc.)
R3	Evaluation - role of mid-term/ongoing evaluation, responsibility for evaluations, sample versus comprehensive approaches, programme versus thematic approaches
R4	Organisation of IT systems for transmission of data between MS and Commission and within MS
Financial management	
F1	Ex-ante assessment of national management and control systems
F2	Financial management and control arrangements during the implementation stage
F3	Audit and ex-post controls - supervision by the Commission

Annex 2 - Regulatory provisions for the arrangements under review

Code	Dimension / Issue	Regulatory basis		
		Cohesion	Rural Development	Fisheries
	<u>Programming</u>			
P1	Different layers of strategic and programming documents - role of Commission in negotiation of programmes	1083/2006, articles 11, 25-28, 30-32, 36, 103	1698/2005 articles 6, 9, 11, 12, 90	1198/2006 articles 15-19, 101
P2	Content/Level of detail in programming - measures or priorities, degree of specification, flexibility of definition of priorities	1083/2006, articles 25, 27,37; 1080/2006 articles 3-7; 1081/2006 articles 3, 8,11; 1084/2006 articles 2-3	1698/2005 articles 9, 11, 16, 20-65. 1974/2006 annex II	1198/2006 articles 15-19, 20-45; 498/2007annex I
P3	Programme balance and mechanisms to ensure delivery of EU priorities - earmarking, minimum by axis, at level of programme	1083/2006 article 9, annex IV ; 1828/2006 annex II	1698/2005, article 17	
P4	Programme modification rules	1083/2006 articles 33, 48, 56, 65	1698/2005 articles 18-19, 71; 1974/2006 articles 2-3, 5-12	1198/2006 article 18, 55, 65; 498/2007 article 3
P5	Innovative approaches - mainstreaming versus specific implementation arrangements	1080/2006 articles 8, 10 and11 1081/2006 articles 3 and 10	1698/2005 preambles 11 and 50	1198/2006 preamble 26
	<u>Implementation</u>			
I1	Compliance with EU legislation	1083/2006 preamble 22, articles13,17, 40, 47, 54, 98, 99	1698/2005 preambles 6, 22, 51, 88, 89; 1974/2006 article 57 1975/2006 article 26	1198/2006 preamble 9 articles 4,7,99; 2371/2002 article 16 498/2007 articles 36, 47
I2	Use of technical assistance	1083/2006, article 46	1698/2005, article 66; 1320/2006 articles 12-13	1198/2006 article 46
I3	Fostering technological and non-technological innovation	1083/2006 article 3; 1080/2006, articles 4-6; 1081/2006, articles 3, 7	1698/2005, articles 4, 20 473/2009 art 16	1198/2006 articles 19, 26, 35, 41; 498/2007 article 19
I4	Economic conditionality – conditions linked to outputs and results	1083/2006 article 37 1080/2006 articles 12,50,51	1698/2005, article 79	
I5	Financial conditionality – conditions linked to expenditure	1083/2006 articles 93-97	1290/2005 article 29	1198/2006 articles 90 - 94

16	The role/impact of eligibility rules (national versus EU level, detailed versus flexible, public versus total expenditure, reimbursable VAT etc) and the clarity of the eligibility rules	1083/2006 article 34, 56, article 78 1080/2006 articles 3-7, 9 (ERDF) 1081/2006 articles 3, 8 and 11 (ESF) 1084/2006 articles 2-3 1828/2006 articles 48-53 (territorial cooperation) 1828/2006 articles 5, 13, 60	1698/2005 articles 3-4, 71, 20-60 1974/2006 articles 13-56 883/2006 article 5 1290/2005 article 11 1974/2006 annex VI 498/2007 articles 29-32	1198/2006 articles 2, 12,13, 51, 55, 20-45, 76-78 498/2007 Annex I
17	Proportionality	1083/2006 articles 13, 74	1290/2005 articles 16-17, 27 1698/2005 article 5	1198/2006 Article 9 498/2007 articles 2, 28, 51-53
18	Financial engineering	1083/2006 articles 44,78; 1828/2006 articles 43-46	1698/2005 article 71; 1974/2006 articles 50-52	1198/2006 article 55; 498/2007 articles 34-37
19	Transition between programming periods		1320/2006	
<u>Reporting, monitoring and evaluation</u>				
R1	Reporting - level of detail of information on operations supplied by member states, activity codes, location, unique identifiers for beneficiary	1083/2006 articles 29, 30, 62, 67, 78 1828/2006 articles 14-11, 16	883/2006 articles 4, 16 1698/2005 article 13, 82 1290/2005 article 8 885/2006 article 7	1198/2006 articles 16, 67, 60, 78 498/2007 article 40
R2	Monitoring - degree of detail, fixed versus flexible lists of indicators, focus on outputs or outcomes, comprehensive or selected interventions, functioning of the Monitoring Committees (composition, rules etc.)	1083/2006 articles 37, 63-66	1698/2005 articles 11, 14, 77-83	1198/2006 articles 20, 62-68
R3	Evaluation - role of mid-term/ongoing evaluation, responsibility for evaluations, sample versus comprehensive approaches, programme versus thematic approaches	1083/2006 articles 47-49	1698/2005, articles 84-87	1198/2006 articles 47-50 498/2007 article 27
R4	Organisation of IT systems for transmission of data between MS and Commission and within MS	1083/2006 articles 66, 76, 37. 1828/2006 articles 31, 39-42 1080/2006 article 12	883/2006 article 18	1198/2006 articles 62, 66, 75 498/2007 articles 64-67
<u>Financial management</u>				
F1	Ex-ante assessment of national management and control systems	1083/2006 articles 58-62, 71 1828/2006, articles 21-24	1698/2005 article 74 885/2006 annex I 885/2006 articles 1-2 1290/2005 articles 36-37 1975/2006 articles 5, 28, 36	1198/2006 articles 57-61, 71 498/2007 annex XII

F2	Financial management and control arrangements during the implementation stage	1083/2006 articles 58, 60, 78, 61, 86-87, and 90 1828/2006, annex X, articles 14, 20 1080/2006 articles 14, 17	1290/2005 articles 6 and 9 1698/2005 articles 74 and 75 883/2006 article 13 885/2006 articles 3 and 5 1975/2006 article 10	1198/2006 articles 57, 60, 83-84 498/2007 annex IX, articles 40 and 46
F3	Audit and ex-post controls - supervision by the Commission	1083/2006 articles 59, 62, 70- 73, 91,92, 98- 101 1828/2006 articles 15-18, annexes no IV- VIII, XIII	1290/2005 articles 7, 8, 17, 27, 30, 31, 41 1975/2006 article 30 885/2006, articles 6 - 16;	498/2007 articles 41, 43, 44, annexes IV- VII 1198/2006 articles 61, 72, 88, 89 96- 99;

Annex 3 - Interview strategy and grids

The underlying principle followed to establish the questionnaires – or interview grids – has been that the latter had to be adapted to the interviewees selected by the Steering group. As proposed in the methodological report, interlocutors have been selected on the basis of their experience and specific knowledge and of their position enabling them to give an account of the area under their responsibility. Thus, in order to take into account the specific profile of the interviewees, two sets of questions have been prepared. The first type tackles issues in broad strategic terms and has been addressed to officials enjoying a broad outlook either because they work on horizontal or coordination matters, or because their function allows them to account for the activities of the different services under their responsibility (“strategic questions”). The second type of questions has been designed to address the topics under investigation in an in-depth manner; questions have been geared towards officials with in-depth knowledge areas of implementation in given policy areas (“operational questions”).

Regardless of the type of questions, interlocutors had the opportunity to focus on one or more dimensions not necessarily covering all of them (ditto for the issues within the dimensions) – this was almost a certainty as far as operational questions were concerned. Furthermore, a specific interview grid could also comprise both types of questions – depending on the particular background of the interviewee. Hence, even though an exhaustive list of questions has been prepared in both cases, the eventual list of question submitted to the interlocutors comprised only a set of questions adapted to the latter taking into account his/her field of competence, experience and function. Each interview grid has been specifically tailored to the interviewee. Each grid contained approximately 10 (maximum 15) questions.

Overall, depending on the type of questions, three categories of questionnaires have been prepared:

- Questionnaires A comprise only strategic questions;
- Questionnaires C comprise only operational questions;
- Questionnaires B comprise both types of questions.

The adaptation of the interview grids to the interviewees has been done on the basis of the table below. The table has been filled by the steering group or the interviewee him/herself. The “customised” questionnaire has been prepared by the study team, but a double check has been realised with the steering group and/or the interviewee concerning the adequacy of the dimensions and type of questions selected.

Establishment of interview grids adapted to the profile of the interviewees

Interviewees (name and position)	Programming	Implementation	Reporting etc	Financial management	Interview grids
y	1 st type of questions	1 st type of questions	-	-	A
z	-	2 nd type of questions	-	-	C
x	1 st type of questions	-	2 nd type of questions	-	B

Two types of questions for the interview grids

The two types of questions are presented below. They are classified by dimension and by arrangement / issues corresponding to the fiches in Annex 5.

Programming

Strategic questions	Operational questions
<ul style="list-style-type: none"> - Have the programming arrangements ensured a sufficiently strong focus on EU objectives in national/regional programming documents? If not, what have been the obstacles to achieving this? How have earmarking arrangements (mandatory assignment of funds to certain interventions) worked in your policy area? - Have there been major improvements in the planning and programming process in comparison with 2000-2006? Which (if any) drawbacks have surfaced? - How effective have been the arrangements in place to achieve synergies and coordination between your policy and other EU policies? What could be improved? 	<ul style="list-style-type: none"> - What is the added value of having national strategy documents in addition to the regional/national programmes? - How well has the programming (incl. negotiation) process worked? Have there been any bottlenecks? Are the current deadlines realistic? - How has the level of detail agreed in the programming documents affected delivery of (cohesion, rural development or fisheries') policy in 2007-2013? - How does the programming approach affect the ability of Member States and regions to design interventions to meet their own specific needs? Is the flexibility in this regard optimal in 2007-2013? - Is the process of programme modification sufficiently flexible for the Member States? What lessons can be learned from the programme modification process of 2007-2013? - To what extent does the programming approach used in (cohesion, rural development or fisheries') policy enable or discourage innovative programming approaches? What lessons can be learnt from the mainstreaming of Community Initiatives and how has it been done (e.g. EQUAL, INTERREG, LEADER, URBAN, local initiative interventions in EFF)?

Implementation

Strategic questions	Operational questions
<ul style="list-style-type: none"> - How has the delivery system affected the outcomes of (cohesion, rural development or fisheries') policy interventions? What are the major strengths and drawbacks the delivery system? - To which extent and how have your services managed to balance and achieve the three objectives which are common to shared management policies: attainment of results and impact on the ground, financial discipline and legal/regular implementation? 	<ul style="list-style-type: none"> - How would you assess the clarity of eligibility rules as they are in 2007-2013 for the national authorities and beneficiaries? To which extent should eligibility be regulated at EU level? Do you see any shortfalls in the extent of present EU regulation? Do you see any particular problems arising from eligibility rules established at EU level, for example in relation to VAT, in kind contribution, overheads etc.? - How have the rules in place encouraged (or discouraged) good financial management by national/regional authorities and achievement of objectives? How have decommitment rules in particular affected implementation in (cohesion, rural development or fisheries') policy area? (How have performance reserves worked – Cohesion Policy)? - What problems (if any) have arisen from reimbursing only costs actually incurred? What benefits do you see in the use of simplified costs such as flat rates unit costs and lump sums within (cohesion, rural development or fisheries') policy? - How have financial engineering mechanisms (e.g. loan and guarantee schemes) worked in (cohesion, rural development or fisheries') policy (well or not)? How do they compare to the regular grants in terms of benefits and drawbacks? Are there any specific problems which have arisen? - What is your experience in relation to the implementation of Technical Assistance in Member States – which problems have arisen in relation to its programming or implementation requirements? What has been the added value of these requirements? - What problems (if any) have you encountered in relation to the need to ensure compliance with other EU policies (public procurement, state aid, environmental rules, equal opportunities etc.)? Which of the other EU policies are the most relevant to (cohesion, rural development or fisheries') policy and do you think their relevance should be maintained? - Are there any problems arising from the overlapping of two financing periods and how can they be tackled? - What is your assessment of the work of Monitoring Committees? To which extent have they managed to fulfil the role assigned to them?

Reporting Monitoring and Evaluation

Strategic questions	Operational questions
<p>- What are the most significant strengths of (cohesion, rural development or fisheries') policy in terms of monitoring and evaluation? What are the biggest caveats – room for improvement? Do you think monitoring and evaluation have supported policy development and delivery sufficiently?</p>	<p>- What is your assessment of the benefits of the present arrangements for annual and strategic reporting? How extensive use is made of the collected data from Member States/Regions? Which information (presently reported) is crucial and useful for the Commission and which is not?</p> <p>- How would you assess the capacities for target setting within the framework of (cohesion, rural development or fisheries') policy – both at the level of the EC and Member States /regions?</p> <p>- What is your assessment of the present indicator system used in (cohesion, rural development or fisheries') policy area? To which extent has the indicator system yielded information necessary for programme management, evaluation and assessment of performance or failed to do so?</p> <p>- What is your assessment of the evaluation arrangements in place in 2007-2013? What role does evaluation play in the management system? To which extent are evaluation results used as a basis for management decisions? Can you highlight any issues in relation to the present requirements and arrangements for evaluation?</p>

Financial management and control

Strategic questions	Operational questions
<p>- Which are the features of the control and financial management system of the (cohesion, rural development or fisheries') policy, which have contributed the most to assurance of the Commission and the European Parliament and sound financial management? Are there any needs for improvement?</p>	<p>- What is your assessment of the system used for the ex-ante verification of the compliance of national management and control systems, which is used in (cohesion, rural development or fisheries') policy? What are the biggest benefits and drawbacks of this approach? Which opinions have MS expressed in regard to the system?</p> <p>- What are the benefits and drawbacks of the control system of the (cohesion, rural development or fisheries') policy? How effective have different layers of control been? Which are the most crucial elements for Commission to be able to rely on national control systems? Have there been major improvements compared to the system of 2000-2006? Do you see any room for simplification in the control system?</p> <p>- What are the benefits and downsides of the certification and financial management system used in (cohesion, rural development or fisheries') policy? Have any salient problems emerged?</p> <p>- What is your assessment to the present requirements on annual reporting in the area of control and audit? How well do the process itself and the content of these annual reports satisfy the needs of the Commission for assurance?</p> <p>- What is your assessment of the closure and clearance arrangements of your policy? What could be improved?</p>

Annex 4 – Interview coverage

Interviewees code	Dimension covered			
	Programming	Implementation	Reporting, monitoring and evaluation	Financial management
<u>AGRI</u>				
A01	X	X	X	X
A02	X	X	X	X
A03				X
A04	X	X		
A05		X		
A06			X	
A07			X	
A08				X
A09				X
A10				X
<u>BUDG</u>				
B01	X	X	X	X
B02				X
B03				X
<u>EMPL</u>				
E01	X	X	X	X
E02	X	X	X	X
E03	X			
E04	X			
E05		X		
E06		X		
E07		X		X
E08		X		X
E09		X		X
E10		X		X

<u>MARE</u>				
M01				X
M02	X	X	X	
M03	X	X	X	
M04	X	X	X	
M05	X	X	X	
M06	X	X	X	X
<u>REGIO</u>				
R01	X	X	X	X
R02	X	X	X	X
R03		X		X
R04	X	X		
R05	X			X
R06		X		X
R07	X	X		
R08	X	X		
R09			X	
R10				X
R11	X	X	X	
R12	X	X	X	
R13	X	X	X	X
R14	X	X	X	X

Annex 5 - “Fiches”

Programming

P1 - Different layers of strategic and programming documents – Role of the Commission in negotiation of programmes

Structural policies share a comparable architecture of programming documents, with one document at each level – Community, national and regional / programme level. Only in the case of fisheries policy, there is no corresponding document at the Community level. This three-tier structure is expected to enhance the strategic dimension of programming by ensuring greater coherence between Community priorities and national / regional needs (vertical coherence) and between different policies implemented on the same territory (horizontal coherence).

Policy documents at the Community level

The conditions of preparation, adoption and revision of the Community-level document are broadly comparable in cohesion and rural development policies. Both “Community strategic guidelines on economic social and territorial cohesion” and “Community strategic guidelines for rural development policy” are adopted by the Council and can be revised in case of major changes in Community priorities. Emphasis is placed, in the case of cohesion policy, on the “close cooperation with Member States” with which the document is elaborated – and revised (Art. 26 of Council Regulation 1083/2006).¹ However no concrete guidance is provided to ensure this close cooperation takes place.

National level policy documents

The objective of the three national-level documents (National Strategic Reference Framework – NSRF, National strategy plan and National strategic plan for cohesion, rural development and fisheries policies, respectively) is to ensure the consistency of implementation with the EU priorities as set in the Community-level document (for cohesion and rural development policies) and other EU and national policies.

The documents are, in the three cases, adopted by the MS, but the regulations stress the dialogue (cohesion and fisheries policies) or the close collaboration (rural development) with the Commission with which the documents are to be elaborated. Reference is also made to the respect for individual institutional set up in cohesion and rural development policies. In the specific case of NSRF, EIB and EIF can contribute to the programming phase.

¹ This is in conformity with Art. 11 Reg. 1083/2006 on partnership. For rural development policy, similar provisions are in Art. 6 Reg. 1698/2005 but no specific reference to partnership is made in connection with the adoption of CSG.

The conditions of adoption of a national-level document by the Commission are specified at regulatory level in the case of cohesion policy only. The Regulation provides that, following consultation with the MS, the Commission takes a decision about the NSRF which concerns only a few elements of the NSRF:

- the list of operational programmes (see below);
- the indicative annual allocation from each fund by programme;
- and in the case of the regions of the Convergence objective, the level of expenditure to ensure additionality and the action envisaged to reinforce administrative efficiency.

Concerning the NSRF, the Aide Mémoire for Desk Officers provides indications on the procedures to follow for examining and adopting the documents. The main features characterising the procedure are:

- informal dialogue with the MS on the basis of a draft NSRF informally submitted to the Commission
- draft position paper assessing the draft NSRF elaborated through intra and inter-service consultations
- formal submission by the MS to the Commission and formal decision by the Commission to adopt the NSRF.

DG Agri's guidance concerning the dialogue to be engaged with MS about National Strategy Plans does not fundamentally differ from the DG Empl / Regio example (the fisheries policy's NSP also follow the same procedures), although the precise provisions in the relevant Regulations differs somewhat, as does whether the provisions are included in a Council or a Commission Regulation. In that case too, an informal phase of dialogue precedes the formal submission of a NSP which is expected to clear the way to the latter. Like in the NSRF case, a paper assessing the draft NSP is prepared through intra and inter-service consultation (called "Internal Synthesis and Assessment Report" or ISAR). The differences can be summarised as below:

- Revisions of the NSP are envisaged and must go through the same procedure as the first submission.
- A NSP is submitted by the Member State to the Commission. The latter takes no decision on it or on a part of it.
- The national strategy plan must be sent ahead of the rural development programmes – whereas in the cohesion and fisheries policies, programmes and the national-level document can be sent together.

DG Agri guidance also applies as far as the fisheries policy's National Strategy Plans are concerned.

Programme-level documents

The documents are "operational programmes" for both cohesion and fisheries policies, and "rural development programmes" for rural development policy.

As far as their scope is concerned, cohesion policy's OP cover only one of the three objectives (Convergence, Competitiveness and Employment or European territorial cooperation) save when otherwise agreed between the MS and the Commission. In addition, one single OP should be financed by only one fund (on this point, differences with the past programming period which allowed multi-fund programmes are significant)². The geographical level of implementation is specified depending on the objective (Art. 35 Reg. 1083/2006). EIB and EIF can contribute to the programming phase (Art. 36 Reg. 1083/2006).

In the case of rural development programmes, there can be either a single programme for the MS's entire territory or a set of regional programmes, possibly integrated into a national framework. The possibility of such national frameworks is a difference with respect to cohesion policy. Finally, there is a single OP by MS for the fisheries policy (except for Luxembourg).

Concerning procedures leading to the approval of the programmes, the regulations in all three policy fields provide that the documents are elaborated by the MS in close cooperation with partners, and must be appraised by the Commission regarding their coherence with the Community Strategic guidelines in the case of cohesion and rural development policies, the corresponding national-level document, the respective General Regulation for RDP and fisheries policy's OP and the ex ante evaluation for fisheries policy's OP. In the three cases, the Commission can ask for additional information and modifications if such coherence is deemed insufficient. The documents must be re-submitted to the Commission within a specific time span.

According to guidance documents drafted by the respective DGs in the three policy fields, the procedures for the adoption of programmes are very similar. The main difference seems to be in the higher level of detail with which the procedures are described within the rural development and fisheries policies frameworks. This is a feature that may be explained by the fact that programmes in the latter policies contain detailed description of measures (see Fiche P2). In general, contrary to the national-level documents, no informal process is foreseen in the guidance notes– although informal exchange does frequently take place. In all three cases, the procedures are organised around four common milestones:

- Admissibility check
- Quality assessment
- Internal consultations and negotiations with MS
- Formal adoption.

Concerning cohesion policy's operational programmes, the manual for desk officers provides limited additional guidance compared to the provisions of the General Regulation. Contrary to what happens for the NSRF³, no general guidance is provided concerning informal procedures preceding the formal

² According to Art. 34 of Reg. 1083/2006, the ERDF and ESF may finance in a complementary manner and subject to a limit of 10% of Community funding for each priority axis of an operational programme actions falling within the scope of assistance from the other Fund provided that they are necessary for the satisfactory implementation of the operation and are directly linked to it. In addition, ERDF and CF can provide joint assistance in the case of OP dealing with transport infrastructure and the environment –

³ As indicated above, the Commission does not adopt the NSRF itself but only some elements so the formal internal procedure of adoption is about these elements only. The OP itself is adopted as an annex of the decision.

submission of the OP by MS but extensive exchanges take place at time on specific OP. The procedure for adoption starts with the formal submission of the OP. The latter can be submitted before the CSG and the submission of the NSRF but cannot be adopted before the decision on the elements of the NSRF. It must be submitted within 5 months after the adoption of the CSG. The admissibility check is performed on the basis of a 1-page checklist included in the Desk officers manual and should not last more than 10 days. The date of the formal submission of an admissible OP sets the starting date for eligibility of expenditure (if an OP is submitted before 1st of January 2007) and is entered in SFC 2007. A quality check is then performed to determine whether the OP contributes to the NSRF strategy. Management and control systems are also appraised as well as whether past major weaknesses has been addressed. The quality check lasts two months. After inter-service consultations and negotiations with MS, an OP must be formally adopted by the Commission within four months following its formal submission (date of receipt of an admissible OP).

Compared to DG Empl / Regio's practice, DG Agri's "Vademecum for the treatment of rural development programmes" contains a much more detailed section on the approval of RDP. The admissibility is to be checked within 10 working days from the reception date through a detailed two-page admissibility checklist. As to the content of RDP, it is assessed on the basis of whether it is consistent with CSG and NSP as well as with the General and implementing Regulations, using a "Guidance document for the assessment of an RDP" which provides a very exhaustive and detailed check list (comprising detailed request of information on measures). Internal and inter-service consultation take place and meetings are organised with the MS before the programme is adopted. The number of iterations required depends on the quality of the document submitted. Overall, the Commission has to approve the RDP within a maximum of six months from the date of receipt of the programme.

The procedures leading to the adoption of fisheries policy's OP are described with the same level of details than their rural development policy counterparts. Overall, the procedures are akin to those in place for both cohesion and rural development policy.⁴ While the period for assessing the OP should not last more than two months, the negotiation phase with MS is not subject to time constraint. Several iterations of revisions can take place. Once the programme formally adopted, the EFF Committee and the EP are informed.

⁴ Once an OP is submitted via SFC 2007, it must first go through an admissibility test done on the basis of a checklist provided by DG Mare. This phase lasts less than 10 days. In addition, before assessing the content of the OP, the Desk officer in charge of the RDP should analyse the conditions for the elaboration of the OP (re. Partnership) as well as review a limited set of qualitative considerations (avoid repetition with NSP, self-explanatory dimension and conciseness, etc). As to the qualitative analysis of the OP, it should enable to formulate an opinion on the strategies proposed by a MS and prepare a "Commission assessment paper" (submitted to an OP Coordination Group ("GROCO" now renamed "Club 3") which will become the basis on which negotiations take place between Commission and the MS.

P2 – Content / Level of detail in programming – measures or priorities, degree of specification, flexibility of definition of priorities

The extent to which the Commission provides Member states with detailed indications on the structure and content of programming document is differentiated across policy fields. See Table 1 below.

Content of strategic and programming documents in structural policies

	Cohesion	Rural Development	Fisheries
Document at Community level	<p>Community strategic guidelines on economic social and territorial cohesion</p> <p>‘Three Guidelines:</p> <ul style="list-style-type: none"> -Making Europe and its regions more attractive places to invest and work - Improving knowledge and innovation for growth - More and better jobs 	<p>Community strategic guidelines for rural development policy</p> <p>Community Priorities and associated Community Strategic Guidelines (as well as key actions to focus support except for the two last horizontal priorities):</p> <ul style="list-style-type: none"> - Improving competitiveness of the agricultural and forestry sector - Improving the environment and the countryside - Improving the quality of life in rural areas and encouraging diversification of the rural economy - Building local capacity for employment and diversification - Ensuring consistency in programming - Complementarity between Community instruments 	n.a.
Document at national level	<p>National strategic reference framework (NSRF)</p> <p>Comprises: analysis, strategy, list of OP, contribution to EU priorities, indicative annual allocation, for Convergence only: how to reinforce administrative efficiency, annual appropriation under EAFRD and EFF, information to verify additionality, for cohesion fund only: coordination between OP and between OP and EAFRD and EFF, and EIB and others. Also where appropriate: coordination between cohesion policy and relevant national policies, coordination between OP and between OP and EAFRD and EFF and others.</p>	<p>National strategy plan (NSP)</p> <p>Comprises: evaluation of environment, strategy for MS / Commission joint action, thematic and territorial priorities under each axis, incl. quantified objectives and M&E indicators, list of rural development programmes and indicative EAFRD allocation, coordination with other CAP instruments, ERDF, ESF; CF, CSIF, EIB, if appropriate</p> <p>Convergence budget, national rural networks.</p>	<p>National strategic plan (NSP)</p> <p>Contains: when relevant, summary description of all aspects of common fisheries policy, priorities, objectives, financial public resources and deadlines of strategies engaged in eight distinct sectors plus two additional optional ones.</p>
Programme	<p>Operational programmes</p> <p>Analysis of situation, justification of priorities, priority axes and targets (quantified according to proportionality principle), indicative breakdown, financing plan, complementarity with EAFRD and EFF, implementing provisions (entities, M&E, bodies receiving / distributing funds, financial flows and transparency, publicity and information, exchange of computerised data), indicative list of major projects. Detailed additional content for specific cases.</p>	<p>Rural development programmes</p> <p>Contain: analysis, justification of priorities and expected impact, information on measures and axes as well as indicators, financing plan, indicative breakdown of initial amounts by measures (public private), additional national financing (when applicable), complementarity with measures financed by other CAP instruments, cohesion and fisheries, implementing arrangements (authorities, + information on management and control structure, description of M&E, composition of Monitoring committee, publicity, designation of partners.</p>	<p>Operational programmes</p> <p>Contain: synthesis of situation, justification of priority axes, targets for each priority axis, principal measures, complementarity with EAFRD, SF, CF, financing plan, implementation provisions (entities, M&E, bodies receiving / distributing funds, financial flows and transparency, publicity and information, exchange of computerised data).</p>

Documents at Community level

The Community Strategic Guidelines (CSG) for rural development policy puts forward six Community Priorities (of which two are horizontal), and associated Guidelines as well as “key actions to focus support on” (except for the last two horizontal priorities). The CSG on economic social and territorial cohesion identifies three Guidelines. More details are provided on the context of the policy, on the Guidelines themselves (they are broken up in sub-headings) as well as on horizontal issues (governance, territorial aspect of the policy, etc). In the case of fisheries policy, the strategic document of reference is the regulation providing for the Common Fisheries Policy (Council Regulation 2371/2002).

National-level documents

The content of national-level documents is specified with an overall comparable degree of details in rural development and cohesion policies. Less indication is provided at regulatory level as far as fisheries policy’s NSP is concerned.

Among the main differences between rural development and fisheries policies on the one hand and cohesion policy on the other hand are the following points:

- The National Strategy(ic) plans are structured along common Axes (defined in the SCG for rural development policy as far as the latter policy is concerned); thematic and territorial priorities are to be specified by MS under each Axis. No requirements are made concerning specific axes in NSRF.
- In NSRF, different cases are distinguished depending on the Objective concerned.
- Monitoring arrangements (quantified objectives and indicators) are requested at regulatory level for rural development policy’s NSP, which is not the case as far as NSRF are concerned. A guidance document by DG Agri lists baseline indicators to be provided by axis whereas DG Empl / Regio while requiring setting quantified objectives rather provide a list of possible information sources.

In both rural development and cohesion policies cases, the NSP and NSRF must comprise a analysis of the socio-economic situation (baseline analysis for DG Agri), coordination with other policies, funding sources, list of programmes (OP and RDP – see below), and indicative budget allocation.

In both cases, guidance is provided about how to account for the envisaged strategy but DG Empl / Regio makes more detailed recommendations (how to address the overall objective, to try and limit the number of thematic and territorial priorities, to provide quantified targets, to propose an urban development strategy, to indicate the response given to the ex ante evaluation of the NRSF, to adopt a gender perspective, to address the consistency with other policies, to provide information on the contribution to the earmarking exercise for the Lisbon objectives). Also, specific recommendations are made in the case of Convergence objective (regarding how administrative capacity are to be strengthened – through which measures, priority or programme, and how to integrated social

partners) and European territorial cooperation objective. Finally, information about the principle of additionality⁵ is requested for regions of the Convergence objective only.

DG Agri provides a template for the NSP comprising 6 chapters (a final chapter deals with the National rural network)⁶.

Programmes

In the general regulations, the articles defining the content of the respective programmes (OP and RDP)⁷ all mention a broadly similar list of content (analysis, justification of priorities or priority axes, targets, (indicative breakdown), complementarity with other funds, financing plan, implementing provisions). However, there is a major difference distinguishing cohesion policy's OP compared to RDP and fisheries policy's OP: no information on measures is requested in cohesion policy's OP while RDP and fisheries policy's OP contain detailed descriptions of both axes and measures, with both of them identified at regulatory level.⁸ In the case of rural development policy, the measures corresponding to the axes are clearly identified and described in detail at regulatory level; in the case of fisheries policy, the description of the priority axes is only accompanied by possible eligible measures.

The choice not to include a description of measures in cohesion policy's OP is motivated in the Aide Mémoire for Desk Officer on the basis of the fact that OP in 2007-2013 are more strategic documents than they previously were and the focus is on strategy and priorities. In the rural development policy framework, the strategic dimension is ensured through a major degree of specification of measures. This enables greater focus and coherence, it ensures that a balance is struck between meeting EU priorities and national / regional needs and it also makes easier the assessment of the interventions.

It is worth noting that as far as cohesion policy is concerned, the absence of reference to measures in the OP is also a major change compared to the 2000-06 programming period, when cohesion policy's OP and "programmes complements" used to provide detailed description of measures under priority axes (yet the content of the measures was not defined in the Regulation as is the case in 2007-13 for both rural development and fisheries policies).

On the face of it, cohesion policy's regulations provide for a differentiated set of priorities that Member states should or could follow, depending on the Objective concerned (Convergence, Regional competitiveness and employment and European territorial cooperation) and the specific needs and challenges characterising the assisted areas. In the end, it is up to MS to establish an appropriate policy mix by concentrating on the most relevant priorities. The ERDF and ESF appear to have the same degree of flexibility in proposing priorities. The objective to which eligible regions belong

⁵ See Working paper N.3: the Commission and the MS have to decide on the level of public expenditure the MS has to maintain (at least equal to annual average expenditure over last programming period - calculated on the basis of actual payment).

⁶ Chapter 1: Baseline analysis, Chapter 2: Overall strategy, Chapter 3: Strategy per axis, Chapter 4: RDPs, Chapter 5: Consistency and complementarity, Chapter 6: National rural network.

⁷ See Art 1083/2006 – Art. 37, 1698/2005 Art 16 and 1198/2006 Art 20 for cohesion policy OP, RDP and fisheries policy OP, respectively.

⁸ Art. 20-65 of Reg. 1968/2005 and Art. 21-45 of Reg. 1198/2006 provide a detailed description of the axes adopted by rural development and fisheries policies' programmes, respectively. Commission Regulation 1974/2006 and Annex I of Regulation 498/2007 provide the list of content of a RDP and OP for rural development and fisheries policies, respectively.

(Convergence, Regional competitiveness and employment or European territorial cooperation) appears to be more discriminating in this respect.

Guidance notes drafted by the concerned DG at time require additional information, possibly reinforcing the degree of specification contained in the regulations. This is the case of RDP to which detailed indications at regulatory level already apply. If judged by the Guidance document for the assessment of an RDP (as well as the admissibility check) prepared by DG Agri, a high degree of detail is requested as far as the structure of the programmes is concerned. The same applies to the document guiding the assessment of OP by DG Mare (and related admissibility check) but with just a slightly lower degree of detail. Finally, DG Empl / Regio guidance allows for more room for manoeuvre in the structure of OP.

However, in cohesion policy's OP, the issues to be addressed (not the structure of the programme) are described in somewhat greater details than in the case of rural development programmes and fisheries policy's OP. In particular, specific arrangements are reviewed, for example earmarking with respect to the Lisbon strategy, the specific cases of ESF-funded programme and of outermost regions, considerations on activities in support to social partners, strategy for mainstreaming innovative actions, etc.

Hence, the guidance notes tend to mirror the degree of detail requested at regulatory level for the structure of rural development programmes and fisheries policy's OP. For cohesion policy, the guidance note does not specify OP structure in greater detail (nor does it make request as far as measures and axes are concerned for example), but it includes a long series of additional considerations for specific cases that should be taken into account when drafting an OP.

Overall, cohesion policy's OPs enjoy more flexibility of programming than counterparts in rural development and fisheries policies. It is as though the three policy fields were placed on a continuum. It starts with cohesion policy which defines a broad set of priorities that can be combined and adapted to the specific cases of MS and regions. It continues with the fisheries policy which provides for a structured set of priorities but leaves some room for manoeuvre in identifying the measures expected to achieve the priorities' objectives. And it ends with the rural development policy which provides for a strict programming framework where both Community priorities and measures are identified at regulatory levels with even some pre defined forks on financial allocation (see Fiche P3).

P3 - Programme balance and mechanisms to ensure delivery of EU priorities – earmarking, minimum by axis, at level of programme

In the structural policies, specific dispositions are adopted to ensure that programmes effectively contribute to reach general Community objective or specific objectives in each field. There are essentially three mechanisms at work:

- the first mechanism consists of fixing a minimum threshold of financial allocations for the axes around which programmes are structured and is specific of rural development policy;
- the second arrangement consists of “earmarking” funds in relation to European Union priorities of promoting competitiveness and creating jobs and is specific of cohesion policy;
- the third approach is a qualitative assessment of the coherence and complementarity of the considered fund with wider Community priorities and other EU policy objectives and is common to the three policies.

Minimum thresholds of financial allocations at axis level

Having balanced programmes, with priority axes defined within quantitative limits in terms of Community funding is considered to be one way to ensure that the considered programmes effectively contribute to Community objectives.

Rural development policy has chosen to set minimum proportion of Community funding going to each axis over total funding to a considered programme. Hence, for RDP which are built around four axes (see Fiches P1 and P3), the minimum financial allocations per axis established at the level of each programme are the following⁹:

- 10% of EAFRD total contribution to the programme for Axes 1 and 3;
- 25% for Axis 2 and
- 5% for Axis 4.

The exceptions have to do with French overseas departments (as far as Axis 2 is concerned) and the new Member States as far as Technical Assistance (Axis 4) is concerned¹⁰.

On the contrary, for cohesion and fisheries policies OPs, there is no minimum amount or proportion of Community funding going to each priority axis. However, there is a capping of amounts that can be spent on technical assistance (see Fiche I2).

⁹ See Reg. 1968/2005, Art.17.

¹⁰ In addition rural development policy also requires agri-environmental payments to feature in each programme, in accordance with national needs (Reg. 1698/2005, Art. 39), while Reg. 473/2009 has allocated additional resources available to rural development policy from the CAP Health Check and the EU Economic Recovery Plan to seven thematic areas which are EU priorities.

Earmarking approach

A different mechanism has been introduced in the 2007-13 programming period by the cohesion policy framework which consists of “earmarking” funds in relation to the EU priorities of promoting competitiveness and creating jobs. Art. 9 Reg. 1083/2006 establishes targets of expenditure in these areas. “Earmarking” is thus established as a mechanism to drive EU Funds towards for the delivery and completion of EU objectives.

The principle of imposing minimal amounts by axis could be therefore compared to the earmarking principle where EU amounts must be allocated on some priorities. Given the higher flexibility of cohesion policy programmes earmarking was necessary to ensure concentration on EU objectives and make it visible.

The targets are differentiated depending on the objective concerned. Hence 60% of the expenditure for the Convergence objective and 75% for the Regional competitiveness and employment objective must deal with EU priorities – the targets apply as an average over the entire programming period and are assessed at the level of the Convergence and Regional competitiveness and employment objectives separately. A guidance note by DG Empl / Regio specifies that targets for each Member states must take into account the starting levels based on data for the 2000-06 programming period¹¹. A list of categories of expenditure is provided with identified “earmarked categories” – the latter may be completed by Member States if appropriate (Reg. 1083/2006, Annex IV and Reg.1828/2006, Annex II). The arrangement is compulsory for old Member states and optional for the new ones.

The NSRFs should contain mention of how the earmarking targets are going to be fulfilled (Reg. 1083/2006, Art. 27). The Lisbon reports should also mention how SFs programming contributes to EU priorities. In the 2009 and 2012 strategic reports, Member States should explicitly address performance with respect to earmarking (Reg. 1083/2006, Art. 29). Finally, the Commission should synthesise any information concerning earmarking in the annual progress reports submitted to the Spring European Council (Reg. 1083/2006, Art. 30) - See also Fiche R3.

The guidance note by DG Empl / Regio provides further indication on the conditions for implementing the “earmarking” arrangement. In particular, it recommends that Member States provide information on earmarked expenditure in their NSRFs rather than at OP level to avoid the risk of slowing down the consolidated examination by the Commission. Member States are invited to include a table presented the indicative effort towards achieving the global earmarking target in the NSRF and make it available in SFC 2007¹². It also insists that there should be no reduction of national resources in favour of earmarked categories (in comparison to 2000-2006 period). As a matter of fact, even though the measurement of the earmarked categories is done considering Community funds only, the emphasis on earmarked categories also concerns national resources. The reporting should follow the indications made at regulatory level; it takes place in the annual reports on the implementation of the National reform programmes, and the information is synthesised by the Commission in the Annual Progress Report presented to the Spring European Council. In addition a

¹¹ Information Paper No.1: “Earmarking”.

¹² The Aide Mémoire for Desk Officers at DG Regio and DG Empl specifies that the NSRF should indicate how single OPs are to contribute to the earmarking exercise through an indicative figure.

concise strategic report is to be provided by Member States twice in 2009 and 2012, synthesised by the Commission and presented to the European Parliament, the Economic and Social Committee and the Committee of the regions. Progress can also be monitored through the Annual Implementation Reports of the OP. The note provides a table of correspondence between 2000-2006 fields of intervention and 2007-2013 categories is provided for earmarked categories in order to facilitate the comparison between the two programming periods.

Qualitative assessment of coherence and complementarity

On the face of it, guidance notes foresee a close examination in qualitative terms of the coherence of the proposed programmes with higher level strategic documents and/or Community priorities and other Community financial instruments. This is done through the quality assessment of both national level documents (NSP for rural development and fisheries policies and NSRF for cohesion policy) and programmes (OP for cohesion and fisheries policies and RDP) detailed in Fiche P2.

In addition, specific guidance notes common to all DGs involved deepen the issue of the complementarity of actions financed by Funds¹³. They review at both NSRF / NSP and OP / RDP level, the measures desk officers should adopt in order to ensure the coherence and complementarity between SFs, EAFRD and EFF. This includes the review of the information Member States must provide concerning coordination mechanisms (NSRF / NSP) or the establishment of “demarcation lines” (OP / RDP under the responsibility of the Member State).

¹³ DG Mare has for example some demarcation lines circulated to the other DGs and which have been used in at a least one practical case, which arose with DG Agri.

P4 - Programme modifications rules

Procedures to adopt programme modifications: differences and commonalities between policies

The possibility to revise programmes in due course of their implementation is envisaged for all policy domains concerned. Programme revision is contemplated in the first instance in the regulations laying down general or implementing provisions of the Funds, according to which “programmes adopted by Member States may be re-examined and, if necessary, their remainder can be revised”.

A similar articulation of this general prescription is present for the three policies. In all cases:

- The Commission adopts a decision to revise the programme after the submission of a request by the Member State, or after initiative of the Commission itself in agreement with the Member State (but for EAFRD minor modifications Member States may adopt the revisions alone – see below).
- Requests for revision follow the approval of the monitoring committee of the operational programme. Monitoring committees have a central role: they may propose to the managing authority any revision or examination of the operational programme likely to make possible the attainment of the Funds' objectives, and are responsible for final approval of the request to be sent to the Commission.
- Causes triggering the necessity of revision range from significant socio-economic changes occurred in the concerned region/country to major difficulties arisen in the implementation of the programme, from the outcome of the interim evaluation to sound management/coordination reasons. Thus, more than one and potentially different are the situations for which revision is possible
- Requests for revision must take into account the outcome of the evaluations, the annual implementation reports and the Commission's reports; and should be submitted to the Commission by electronic means. The importance of the outcome of evaluations as a cause for triggering the modification is emphasised, in particular within the cohesion policy context. Socio-economic changes in the region's environment, major changes in Community, national or regional priorities, implementation difficulties, and significant deviations from the goals initially set are examples for which the revision of an operational programme should be triggered, preceded by an appropriate evaluation. Thus, it is suggested that the proposal for the revision should be based on a regular monitoring process and supported by both qualitative and analytical considerations and any evaluations being undertaken on an on-going basis. At the same time, it is suggested to carry out official evaluations in case proposals for revision of operational programmes have been put in place and relate to major changes.
- The eligibility of the new expenditure added by the programme's revision starts from the date of the submission to the Commission of the request for revision¹⁴. Programmes' modifications could

¹⁴ “In cases of emergency measures due to natural disasters, eligibility of expenditure relating to programme changes as referred to in Article 6(1) may start from a date earlier than the date referred to in the second subparagraph of Article 71(1) of Regulation (EC) No 1698/2005 ” (Reg. 1974/2006, Art. 10) .

also lead to a change of the co-financing rate of the priority axes. Given that the certification and the statement of expenditure are cumulative, any modification to the co-financing rate of a priority axis that would receive the approval from the Commission through a decision will have a retroactive impact on expenditure already certified in the past. As the computer system calculates the Fund's contribution on cumulative basis, Member States should expect a reduction in the amounts already paid in case of reduction of the co-financing rate, or an increase in the reimbursements from the Funds for expenditure declared in the past, in case of increase in the co-financing rate.

- Not only Rural Development/operational programmes but also National Strategy Plans /National Strategic Reference Frameworks may be subject to update. However, due to their long-term strategic planning nature and their relatively flexible character, these are exceptional situations.

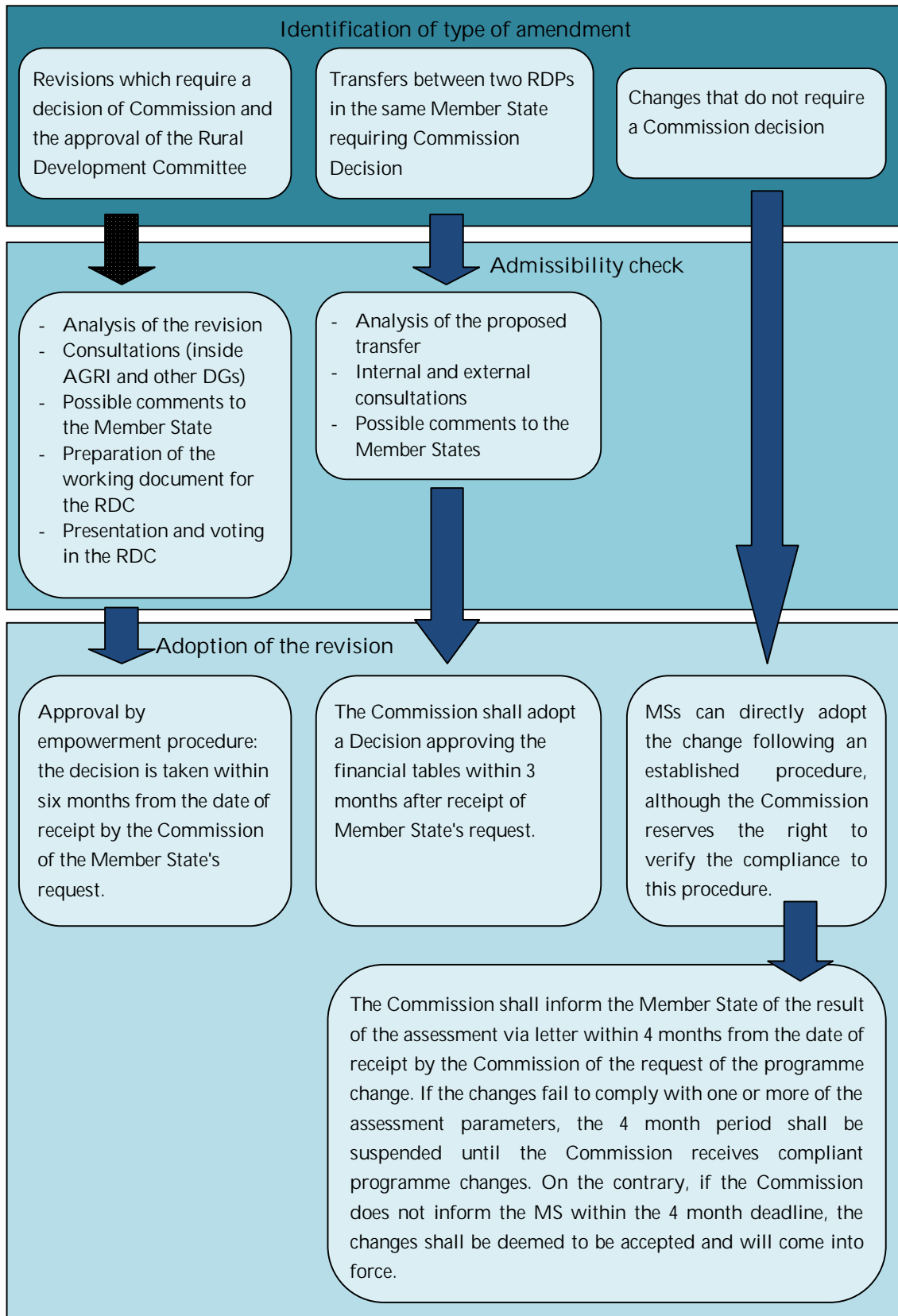
Turning to the differences in place, the main elements of differentiation are:

- In rural development policy there are changes for which a decision of the Commission is not mandatory. Member States are authorised to make non-financial revisions concerning the introduction of new measures or revisions of financial breakdowns by measure within an axis, according to a specified procedure¹⁵. Acceptance from the Commission is in this case related only to an assessment of the compliance of the MS action with procedure, but not on the content of the revision. In the case of financial transfers above the threshold of 1% of the total EAFRD contribution, MSs can submit programme revisions, to be adopted upon Commission acceptance, to transfer shares of the Fund when the total contribution of the EAFRD is not altered and the annual EAFRD allocation to the Member State concerned is respected. In all other cases, a decision adopted by the Commission together with the Rural Development Committee is, on the contrary, obligatory (see Figure below).
- Rural development policy provides that programme changes may only be proposed from the second year of implementation of the programme and should clearly provide the reasons and problems justifying the change, as well as the expected effects of the change and the relationship between the change and the national strategy plan. Also, requests for programme revisions should not be submitted more than once per calendar year.
- The time frame for adopting the decision by the Commission is different: three and two months after the formal request by the Member State in the case of cohesion and fisheries policies, respectively, while in the case of rural development policy the time frame depends on the type of amendment.

In general, the regulatory framework of the rural development policy is much more detailed and articulated. Art. 6 to 12 Reg. 1974/2006 laying down detailed rules for the application of the EAFRD are specifically dedicated to the issue "Changes in rural development programmes". Moreover, the policy offers an example of very articulated guidance on how to put into practice the regulatory requirements concerning programmes revisions. The following Figure summarizes the steps to be followed to adopt an RD programme's revision.

¹⁵ Also the changes relating to the exception referred to in Article 5(6) of Regulation 1698/2005 or transferring up to 1% of the total EAFRD contribution to the programme for the entire programming period are not subject to Commission decision.

Steps for adopting an RD programme modification



P5 - Innovative approaches – mainstreaming vs. specific implementation arrangements

To the difference of Fiche I3 dealing with innovation as an output of structural policies assistance, the issue addressed here has to do with innovative mechanisms of delivery of the policies.

Until 2006 a series of Community Initiatives were not part of national or regional programmes but were pursued through specific funding. They comprise:

- INTERREG aimed at strengthening economic and social cohesion in the Union by promoting cross-border, transnational and inter-regional cooperation;
- URBAN focused on the promotion of sustainable urban development;
- EQUAL was to contrast all forms of exclusion, discrimination and inequality in the labour market;
- LEADER and PESCA were dedicated to the implementation of innovative development strategies respectively for rural areas and fishing activities.

These initiatives allowed addressing the specific needs of the local authorities, and communities, by funding a very wide range of investments.

In the 2007-2013 programming period, Community Initiatives came as such to an end but they were characterised by distinct development. While URBAN and EQUAL are no longer ascribable to single specific interventions and are included in the mainstream of the ordinary programming of cohesion policy, both INTERREG and LEADER were prolonged through specific arrangements. As a matter of fact, INTERREG has given way to the European Territorial Cooperation objective in the cohesion policy framework. As to LEADER, it has become a specific priority axis in rural development programmes. As the recital of the General Regulation of the rural development policy suggests with particular reference to the LEADER initiative, the high level of maturity reached by the Community Initiative allowed it to be adopted as an approach applied in general programming, but its specificity is to some extent preserved by transferring its basic principles through a specific axis in RDP.

LEADER has also given rise to the formulation of Farnet (European Fisheries Areas Network), an innovative bottom up tool supporting the implementation of an axis of fisheries policy's programmes.

On the face of it, specific arrangements can help to strike a balance between preserving the innovativeness of programming approaches and diffusing their benefits / advantages.

Other different specific arrangements are adopted by the structural policies. For example, the ESF foresees the possibility to implement specific innovative activities through particular implementation arrangements defined by the Managing Authority. A Guidance Note recommends creating useful tools to generate new ideas and approaches, such as laboratory for experimentation. These specific instruments should be managed by a dedicated team strongly linked to the Monitoring Committee of the OP, in order to ensure extensive integration of good practices. Usually, they are implemented for shorter period and they undergo a specific analysis of results.

As far as the ERDF is concerned, Art. 8 of Reg. 1080/2006 gives the possibility for regions belonging to the Regional competitiveness and employment objective to implement activities aimed at promoting urban sustainable development through specific programmes of priority axes, financed by additional

ERDF funds. Moreover, in case of territorial specificities, the possibility is given to use the ERDF to fund investments aimed for example at increasing accessibility, promoting the sustainable use of resources and encouraging tourism, through specific additional allocations without prejudice to the general programmed objectives.

For rural development policy, where, a horizontal axis is dedicated to the principles of the former LEADER initiative, Regulation 1698/2005 and guidelines stress how this is to contribute to innovation.

Overall, the 2007-13 programming period is characterised by the attempt to reap the fruit of innovative approaches implemented in the past through Community Initiatives. A distinction is to be made between the inclusion of innovative programming approaches in general programming through mainstreaming and through the establishment (or preservation) of specific arrangements. To different extent, each structural policy encompasses the two types of approaches and cannot be differentiated on this basis.

Implementation

I1 - Compliance with EU legislation

Compliance with EU legislation is a wide requirement, more falling into the scope of the principles of the funds rather than of the specific rules. Within this broad framework, at least three main areas can be singled out to further analyse. A central role in the delivery of the structural policies is, in fact, played by public procurement rules, State aid and EU environmental acquis, whose respect must be ensured in delivering the policies. Focusing on these three dimensions, it is possible to explore some specific arrangements that the Commission has established in order to guarantee policy delivery complying with the EU standards.

Compliance with public procurement rules, State aid and environmental acquis concerns various aspects of the implementation of the structural policies' interventions, and in particular the management verifications and the trigger for financial flows. The current approach establishes a shared responsibility in managing EU financial resources, which is also applicable in the case of irregularities with regard to the EU legislation. Member States' Managing Authorities are in charge of the overall programmes implementation and have responsibility in terms of financial management. Before declaring expenditure to the Commission, they have to verify that the procedures applied in allocating the resources comply with the Community legislation. Given that expenditure borne is reimbursed by the Commission only after beneficiaries have been paid out, this system allows encouraging control from Member States.

As regards verifications to be carried out by Member States, DG Empl / Regio (and consequently DG Mare) provide guidelines on certain practical aspects that should serve as a reference for the Member States for the correct application of Art. 13 Reg. 1828/2006 (Art. 39 Reg. 498/2007 for fisheries) on managing authorities verifications, including specific recommendations on how to verify compliance of the operations with EU legislations. DG Agri has a guidance document on the verifiability and controllability of agro-environmental measures.

Obviously, since the three policies have different objectives, dealing with different types of projects and beneficiaries, the same "area of compliance" may have a different degree of relevance according to the policy concerned. Rural development and fisheries policies, whose beneficiaries are mainly private, are less affected by public procurement rules than it happens in the case of cohesion policy, whose beneficiaries are mainly public.

Public procurement

Dealing mainly with public beneficiaries, cohesion policy's measures are the ones where ensuring compliance with the Community Directives for the award of public contracts¹⁶ is more relevant. SFs

¹⁶ 92/50/EEC – Public service contracts; 93/36/EEC – Public supply contracts; 93/37/EEC – Public works contracts; 93/38/EEC – Public contracts in the water, energy, transport and communications sectors; 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors; 97/52/EC of 13 October 1997 amending Directives 92/50/EEC,

regulations foresee the possibility for the Member States and the Commission to make corrections to the expenditure co-financed by the funds in case of non-compliance with the rules on public procurement. In particular, the corrections to be applied consist of cancelling all or part of the public contribution to the operational programmes, on the basis of the nature and gravity of the irregularity detected (Reg. 1083/2006, Art. 98 and 99). DG Empl / Regio have further elaborated the issue by providing guidelines to be applied in case of detected irregularities in the contracts co-financed by the Structural Funds. The aim is to ensure coherence in the operations of EC officers and Member States in front of common established situations. Concerning verifications of Member States, DG Empl / Regio suggest that managing authorities should verify:

- the planning phase, and in particular:
 - the appropriateness of the procurement method used, and
 - The interdependence between the different contract phases (land acquisitions, site preparation, utilities connections, etc.).
- The tendering procedure: for high value contracts or where beneficiaries are presumed to be inexperienced in the area of public procurement, Managing Authorities should ensure, prior to advertising the contract, that the quality of the tender documents have been verified either by their own experts or by an external expert.
- Selection and award criteria: Managing Authorities should obtain and review the tender evaluation reports prepared by the evaluation committees, as well as the review of any complaints submitted to the contracting authority by tenderers, in order to verify that tender selection and award procedures have been carried out in accordance with the EC and national public procurement rules.
- The contract implementation phase: for contracts exceeding the threshold in the EC public procurement directives, Managing Authorities should arrange a procedure to ensure that all significant supplementary / complementary contracts or substantial amendments of contracts are notified to a public procurement control unit before being signed.

In the other two policies the issue is relevant but to a lower degree. EAFRD regulations envisage compliance with public procurement within the scope of the administrative checks made on applications. These include a verification of the compliance of the operations with applicable Community rules, including public procurement rules, State aid and all the other appropriate and obligatory standards established by EU or national legislations (Reg. 1975/2006, Art. 26). In the case of EFF regulations, the matter is mainly related to the conditions applicable to financial engineering instruments organised through holding funds. Managing Authorities can implement these funds

93/36/EEC and 93/37/EEC; 92/13/EEC - remedies relating to the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors; 89/665/EEC - review procedures to the award of public supply and public works contracts; 2004/17/EEC – Public contracts in the water, energy, transport and postal services sectors; 2004/18/EEC – Public works contracts, public supply contracts and public service contracts; 2005/51/EC – amending Annex XX of Directive 2004/17/EC and Annex VIII of Directive 2004/18/EC; Commission Directive 2001/78/CE of 13 September 2001 on the use of standard forms in the publication of public contract notices; Regulation (EC) No 1564/2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives 2004/17/EC and 2004/18/EC.

through the award of a public contract, which must be in accordance with applicable public procurement law (Reg. 498/2006, Art. 36).

State aid

State aid rules apply to measures that satisfy the criteria listed in Article 87(1) of the Treaty:

- the measures involve a transfer of State resources and create an economic advantage that the undertaking would not have received in the normal course of business;
- the aid is selective, affects the balance between certain firms and their competitors; and has a potential effect on competition and trade between Member States.

Structural and other EU policies must be compliant with Community rules on State aid so that they cannot finance measures having the criteria listed in Art. 87(1) of the EU Treaty. There are, however, a number of exemptions that make certain categories of State aid measures compatible with the Treaty, if they fulfil certain conditions. DG Competition has in particular issued a guide and factsheets on the Community rules on State Aid that can be used by all DGs and Member States whose activities involve respect of State aid rules.

State aid rules are relevant in all three policy areas as much of the support is granted to private entities.

DG Agri offers an exhaustive regulatory basis on how to deal with State aid rules. Art. 88 Reg. 1698/2006 and Art. 57 1974/2006 provide a detailed description of cases for which rural development programmes are enabled to provide additional national funding as exemptions to State aid. Expenditure incurred for these measures and operations are eligible only if the aid does not constitute unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 (18) at the time the aid is granted. The managing authority or any other competent authority in the Member State ensures that any applicable notification requirements for individual aid are respected, and that such operations are selected only after notification of the underlying aid and approval by the Commission.

Fisheries policy is also particularly concerned by the issue providing provisions explicitly dedicated on State aid within the scope of the principles of EFF assistance (Reg. 1198/2006, Art. 7), as well as in specific guidelines.

Albeit state aid is widely granted within cohesion policy, the specific regulatory framework is less detailed, relying mostly on general state aid rules. It pays particular attention to the argument especially as regard the format of the audit strategy and the statement of expenditure, as well as the financing of major projects in the field of productive investment.

Environmental acquis

Ex ante compliance with EU environmental acquis¹⁷ is particularly relevant to the Cohesion Fund and ERDF since these two funds finance to great extent large infrastructural investments, whose impact on the environment must be carefully assessed.

SFs regulations range from the general provision of Art. 17 Reg. 1083/2006 (“the objectives of the Funds shall be pursued in the framework [...] of the goal of protecting and improving the environment”) to the more specific requirement asking Member States to provide a detailed analysis of the environmental impacts produced by major investment projects co-financed by ERDF and/or CF (Reg. 1083/2006, Art. 40). Guidance from DG Empl / Regio further proposes that management verifications by Member States should ascertain that the beneficiaries have complied with the relevant directives by checking whether or not the related consents have been obtained from competent national authorities, responsible for ensuring that EC environmental legislation is correctly applied. Managing Authorities should ensure that they have access to appropriate in-house or external expertise to assist them in identifying all relevant environmental issues related to the particular type of operations being approved, as well as in verifying continuing compliance of operations with the relevant environmental rules. It is the same approach for the other horizontal priorities such as non discrimination, gender equality, etc.

In the case of rural development policy, compliance with EU environmental acquis is particularly relevant within the context of the conditions for measures aiming to improve the quality of agricultural production and products and of the standards introduced in national legislation implementing Community law, imposing new obligations or restrictions to farming practice. To this regard, a clarification is included into the preambles of the EAFRD regulation, specifying that the aim of the measure on meeting standards is to “promote a more rapid implementation by farmers of demanding standards based on Community legislation concerning the environment, public health, animal and plant health, animal welfare and occupational safety and the respect of those standards by farmer”.

As to the EFF, it contributes in particular to the implementation of the Common Fisheries Policy thus to safeguarding the marine environment and natural resources. The interventions it supports are generally linked directly to measures designed specifically to avoid or reduce environmental damage, such as reducing fishing effort or promoting selective gear. In addition, several mentions in the EFF regulation raise the environmental issue in terms of a general attention to be paid to, rather than in terms of compliance with specific rules or standards. For instance, its article 4, on the objectives of the EFF, stipulates that financial support aims, among other things, at ensuring exploitation of living aquatic resources and aquaculture in order to promote an economically, environmentally and socially sustainable growth. Thus, there is less need for ex ante assessment of compliance with EU directives on environment or to establish controls of compliance at a later stage of implementation.

¹⁷ Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as last amended by Directive 2003/35/EC; Council Directive 90/313/EEC, as amended by 2003/4/EC Council Directive 79/409/EEC on the conservation of wild birds; Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora; Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as last amended by Directive 2008/32/EC; Council Directive 2006/12/EC of the European Parliament and the Council on waste; Council Directive 1999/31/EC on the landfill of waste; Council Directive 2000/76/EC on the incineration of waste.

I2 - Use of technical assistance

The opportunity to use technical assistance for the implementation of structural policies can be either on a centralised or decentralised basis.

When the use of technical assistance is centralised, the initiative is in the hands of the Commission (or, according to regulations wording, "on behalf of it"). Technical assistance at the initiative of the Commission is outside the shared management framework and as such will be not treated here.

Technical assistance at the initiative of the Member States: regulations

When the use of technical assistance is decentralised, the initiative is in the hands of the Member States and it is implemented within the shared management framework. This possibility is foreseen in the regulatory bases of all the three policies concerned, only with minor differences.

The main commonality lies in the type of activities that can be financed. In all cases it is stated that the Funds may finance activities of preparation, management, monitoring, evaluation¹⁸, information and control of the operational (ERDF, ESF, CF and EFF) and rural development (EAFRD) programmes. Technical assistance actions are undertaken within the framework of each programme, meaning that they are a "component" of the programme – although, in some cases, they may also be undertaken in the form of specific "complementary" programmes, as envisaged by the cohesion and rural development policies (see below). The reinforcement of administrative capacity for Funds implementation is also envisaged as an activity deserving technical assistance actions. This is specifically the case of the cohesion policy's regulatory framework, while fisheries policy seems to limit the scope of technical assistance for administrative capacity only to Convergence regions. Rural development policy in turn, has more in depth attention for networking activities. According to Art. 66(3) Reg. 1698/2005, resources under technical assistance can be reserved for establishing and operating the National Rural Network (NRN), which groups the organisations and administrations involved in rural development in a concerned country. Funds can be used for the structures needed to run the network and "for an action plan containing at least the identification and analysis of good transferable practices and the provision of information about them, network management, the organisation of exchanges of experience and know-how, the preparation of training programmes for local action groups in the process of formation and technical assistance for inter-territorial and transnational cooperation".

Slight differences between policies also occur in the maximum shares of the total programmes' amount that may be devoted to technical assistance. In the case of cohesion policy, the shares are 4% for the Convergence and Regional competitiveness and employment objectives, and 6 % for European territorial cooperation objective. 4 % of the total amount of each rural development programme is the limit set by DG Agri, while DG Mare has fixed a threshold of 5%. It should be highlighted that

¹⁸ Evaluations are financed from the budget for technical assistance of the operational programme if they are carried out under the responsibility of the Member State and from the budget for technical assistance of the Commission if they are carried out under its responsibility (Reg. 1198/2006, Art 46(7)). DG Agri regulations also state that expenditure related to the ex post evaluation of the 2000-06 programming period is eligible under the technical assistance component of the rural development programme of the current programming period (this is also true for cohesion and fisheries policies although not explicitly mentioned in the regulations).

fisheries policy is the only one for which the exceeding of the threshold is contemplated as a concrete possibility, even if only on exceptional base and in some duly justified circumstances.

As for the treatment of technical assistance expenditure during the time overlaps occurring between the 2000-06 and 2007-13 programming periods please refer to fiche I10.

Guidelines on programming and implementing technical assistance

As for the systems in place to put into practice the regulatory framework, DG Empl / Regio specifically developed an ad hoc information note on the programming and implementation of technical assistance for 2007-13, upon a series of requests from the Member States.

The note deals with the following matters:

- a. relationship, division of tasks and complementarity between technical assistance under a thematic or regional operational programme and any specific technical assistance programme;
- b. how to treat technical assistance in the context of multi-objective programmes;
- c. financing of technical assistance actions of one fund by another fund.

As far as point a) is concerned, the guidelines recommend placing technical assistance undertaken within the framework of an operational programme in a specific priority axis of it, in order to simplify the calculation of funds allocation. However, a Member State may decide to establish, in addition, a specific technical assistance programme, which is to be considered as complementary to the activities undertaken under all the other operational programmes and not as replacing them. Thus, it is advisable that the objectives of any specific technical assistance programme address activities that are horizontal and of relevance to a number or all operational programmes concerned in a given country. Examples may be the establishment of common database and information system or a common training for managing authorities' staff. On the contrary, technical assistance actions directly linked to only one programme must be included in this programme. Finally, the expenditure dedicated to any specific technical assistance programme should not lead to a situation where the total proportion of funds allocated to technical assistance in a Member State exceeds the limits of 4% or 6% of the total expenditure allocated under the cohesion policy objectives.

A quite similar situation is in place in the case of rural development, where National Rural Networks can be established either under the technical assistance component of a single national rural development programme or as a specific separate programme itself¹⁹. The importance attributed to NRNs also emerges by looking at the guidance document for the assessment of rural development programmes. The document provides EC officers with a brief checklist to guide their assessment of the technical assistance operations devoted to this issue:

- are the organisations included in the network representative and coherent with the RDP strategy (covering sufficiently the 4 axes)?

¹⁹ The alternative chosen must be specified into the National Strategic Plan.

- are the human resources allocated to the network sufficient and cover all technical/thematic expertise?
- does the action plan include common (used by all MS and at EU level) networking tools (i.e. project database, expert database, transnational project database, LAG database, transnational cooperation partner search tool, publications, etc.)?

Turning back to point b) of DG Empl / Regio note, it is remarked that, in agreement between the Commission and the Member State, the specific technical assistance programmes may be of multi-objective nature. In this case the same rules in place to any other multi-objective programme apply, meaning that separate priority axes and separate financial management for each objective should be clearly indicated.

As far as point c) is concerned, specific technical assistance operational programmes can only be co-financed by one Fund (according to the principle of “mono-Fund programming”), with the notable exception of the possibility for the ERDF to co-finance such a programme with the Cohesion Fund. Consequently, a Fund financing a specific technical assistance programme may finance horizontal activities concerning programmes financed by another Fund²⁰. For example, it may support actions aiming at the development of an IT monitoring system to be adopted for all Structural Funds operational programmes implementation.

Finally, DG Mare guidelines on technical assistance are less detailed, also because the regulations do not foresee the adoption of specific technical assistance programmes, which is normal given that there is only one operational programme per Member State. In the guidance for the assessment of EFF operational programmes, the issue is concisely treated; mention is made that technical assistance actions should be presented as a separate priority, in order to ensure the verification of the financial limits, and that networking should be considered as a specific area for devoting technical assistance resources. Where the entire Member State is covered under the Convergence objective, it may use technical assistance to improve its administrative capacity in implementing the programme. In this case, the Member State concerned should identify its main administrative weaknesses and bottlenecks in the system of relationships between national, regional and local actors, as well as actions to face these problems.

²⁰ With the exclusion of the Cohesion Fund, which cannot finance activities for operational programmes under the regional Competitiveness and Employment objective through a specific technical assistance operational programme.

I3 - Fostering technological and non-technological innovation

Differently from Fiche P5 dealing with innovative mechanisms of delivery of the structural policies, the present Fiche treats innovation issue as an output of the policies assistance.

Innovation development: a key priority

Innovation development is a pillar in the current architecture and strategic approach of the structural policies for the 2007-2013 programming period. The notion of innovation is invoked in several articles of the regulations concerned, from the general objectives and guiding principles of the Funds, to the Community Strategic Guidelines²¹, stemming from the renewal of the Lisbon strategy.

For instance, the regulation laying down the general provisions of the Structural Funds states that “the ERDF, the ESF, the Cohesion Fund, the EIB and the other existing Community financial instruments shall each contribute in an appropriate way towards achieving [...] the development of innovation and of the knowledge society, adaptability to economic and social changes, the protection and improvement of the environment, and administrative efficiency” (Reg. 1083/2006, Art. 3). EAFRD and EFF provisions follow similar paths:

- “Support for rural development shall contribute to [...] improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation” (Reg. 1698/2005, Art. 4);
- “In the preparation of the operational programmes [...] Member States shall take into account [...] encouragement of operations with high added value through the development of innovative capacities that provide for high quality standards and meet consumer needs for fisheries and aquaculture products” (Reg. 1198/2006, Art. 19).

The objective of supporting innovation has been significantly strengthened in the current programming period compared to the previous one. This is the case for all the policies analysed. Indeed, in the 2000-06 SFs general provisions, fostering innovation is not even contemplated within the objectives of the Funds. Also, in the list of SFs categories of expenditure annexed to the regulation²², “Research, technological development and innovation” is the last priority (immediately following tourism) to be mentioned within the broader productive environment field of intervention. On the contrary, in the current list, innovation has been “promoted” as first priority theme, further broken down into nine self-standing sub-categories²³.

Choosing the themes for innovation

Recognizing that fostering innovation is today a key priority in the structural policies, a matter of interest may be therefore to investigate the scopes of its application in choosing the specific themes to fund innovation within operational/rural development programmes.

²¹ CSG No 9 states “Member States have developed national reform programmes to improve the conditions for growth and employment taking account of the integrated guidelines. These strategic guidelines should give priority, for all Member States and regions, to those areas of investment that help to deliver the national reform programmes taking account of national and regional needs and situations: investment in innovation, the knowledge economy, the new information and communication technologies, employment, human capital, entrepreneurship, support for SMEs or access to risk capital financing.”

²² See Annex IV of the Commission Regulation No 438/2001

²³ See Annex II of the Commission Regulation No 1828/2006

In this regard, the approach followed by cohesion policy consists in providing examples of innovative activities to be supported by the SFs, without – nevertheless - limiting their application to specific axes or measures of the operational programmes of the Member States. The latter are free to choose the themes for funding most appropriate to their specific context. In particular, innovation is cited in Articles 4 and 5 of ERDF regulation as the first priority of the Fund, under both the Convergence and Regional competitiveness and employment objectives. The issue is further elaborated by providing a long list of illustrative activities capable to pursue this priority. The list may be seen by the Member States as a non-restrictive set of examples of actions that can be adopted throughout the entire operational programmes, i.e. under different priority axes and measures. ESF regulation acts in the same way. Moreover, after the enunciation of objectives of the Fund, a dedicated article is added, according to which “in the framework of each operational programme, particular attention shall be paid to the promotion and mainstreaming of innovative activities. The managing authority shall choose the themes for the funding of innovation in the context of partnership and shall define the appropriate implementation arrangements” (Reg. 1083/2006, Art. 7).

Rural development and fisheries policies can be instead picked up as examples of the horizontal application of the priority on innovation development, within relatively fixed fields of interventions, reflected in the Member States’ operational programmes.

In rural development policy regulations, innovation is immediately cited as a type of operations to be included in the content of the RD programmes. Member States should indeed provide evidence of innovative operations related to climate change and biodiversity priorities in their programmes (Reg. 473/2009, Art. 16). Additionally, fostering of innovation is explicitly mentioned as a way to achieve the first objective (or “Axis”) of the EAFRD, i.e. “Improving the competitiveness of the agricultural and forestry sector”. Art. 20 Reg. 1698/2005 specifies that support targeting Axis I shall concern a set of different types of measures, among which measures aimed at restructuring and developing physical potential and promoting innovation through:

- modernisation of agricultural holdings;
- improving the economic value of forests;
- adding value to agricultural and forestry products;
- cooperation for development of new products, processes and technologies in the agriculture and food sector and in the forestry sector;
- improving and developing infrastructure related to the development and adaptation of agriculture and forestry;
- restoring agricultural production potential damaged by natural disasters and introducing appropriate prevention actions.

This is directly reflected in the guidelines to put the regulatory requirements into practice. The guidance document on National Strategy Plan (NSP) template, for example, indicates that each NSP should include in the third chapter the proposed national strategy per axis, including quantified targets and indicators to be used. For axis I, the main issues to be addressed are the balance between

restructuring/modernisation and knowledge transfer/innovation, and the identification of priority sectors for investment in human and physical capital. Also,

However, innovation in rural development policy is not limited to the implementation of the first axis only, but it can be present in all four axes of an RD programme. Technological innovations for example can be present in axes I and II, as environment-related issues, and in axis III, as broadband, diversification, etc. Non-technological innovations (governance) are instead potentially present within axis IV.

Similarly to rural development, support to innovative actions in fisheries policy is envisaged with provisions that are at the same time specific and circumstanced, but also spread alongside different fields of intervention of the EFF. A first specific provision is, for example, that of the support of pilot projects, i.e. projects aimed at acquiring and disseminating new technical knowledge through testing technical or economic viability of innovative technologies, as well as plans for the establishment of no-fishing zones, methods to improve gear selectivity, and alternative types of fishing management techniques (Reg. 1198/2006, Art. 41). A pilot project should always include adequate scientific follow-up in order to yield significant results. Pilots projects are foreseen within the scope of priority axis 3 "Measures of common interest". Another example of a requirement dealing with fostering innovation - and in particular technological innovation - is provided by Art. 26 Reg. 1198/2006, according to which the use of technological innovations that do not increase fishing effort is envisaged as an activity deserving the payment of premiums for fishers and/or owners of fishing vessels involved in small-scale coastal fishing. Aid for small-scale coastal fishing is, in this case, included under priority axis 1 "Measures for the adaptation of the Community fishing fleet". Finally, attention to innovation is also paid within the scope of the enterprise support, which is foreseen, amongst other, to operators producing or marketing new products, applying new technologies, or developing innovative production methods. This type of support falls under priority axis 2 "Aquaculture, inland fishing, processing and marketing of fishery and aquaculture products". Thus, these are three different provisions dealing specifically with fostering innovation in the fisheries sector that fall in as many priorities of the EFF.

I4 – Economic conditionality – conditions linked to outputs and results

In order to increase the effectiveness of the use of public spending, a performance-oriented approach has been adopted in the framework of structural policies. The “performance reserve” was the main tool establishing a link between financial allocations and results introduced in the previous programming period by Structural funds regulations. Other arrangements also contribute to the performance-oriented approach.

The Performance reserve

The principle of the performance reserve is that a percentage of the Structural Funds is withheld at the beginning of the programming period and is allocated after a mid-term evaluation to the programmes judged to be performing well on the basis of their score against a range of measurable indicators.

This principle has been confirmed in the current programming period in the field of cohesion policy, while no reference to it emerges from regulations and guidelines regarding rural development and fisheries policies.

As far as cohesion policy is concerned, significant differences compared to the previous programming period occurred in relation to the implementation of the performance reserve. First of all, according to Article 50 of the General regulation on Structural Funds, an important degree of flexibility has been gained by Member States. They are no longer obliged to establish such a reserve; rather they can decide to establish one on their own initiative²⁴ (“national” performance reserve). Whenever a Member State decides to establish such a reserve, it shall assess the performance of its operational programmes under each objective (not later than 30 June 2011). Following this phase, the Commission allocates the national performance reserve by 31 December 2011, on the basis of proposals from and in close consultation with each Member State concerned.

The amount of the performance reserve is also different from the previous programming period. In the current programming period of cohesion policy, such reserve applies to the Convergence objective and/or the Regional competitiveness and employment objective and it amounts to 3 % of the total allocation for each objective²⁵.

Contrary to the previous programming period, no guidelines are provided at regulatory level for the assessment of the performance of the Programme in view of the allocation of the performance reserve²⁶. In fact only only two Member States decided to create such a reserve.

²⁴ In the previous programming period EC Reg. 1260/1999 - Article 44 stated, instead, that each Member State, in close consultation with the Commission, shall assess under each objective and not later than 31 December 2003 the performance of each of their operational programmes or single programming documents on the basis of a limited number of monitoring indicators reflecting effectiveness, management and financial implementation and measuring the mid-term results in relation to their specific initial targets. It was also established that not later than 31 March 2004, the Commission shall allocate, in close consultation with the Member States concerned, under each objective, the additional resources to the operational programmes or single programming documents or their priorities which are considered to be successful.

²⁵ In the previous programming period the amount of the performance reserve was 4% of the appropriations allocated to each Member State. This amount was placed in reserve until 2003, for distribution to the best-performing programmes by 31 March 2004 at the latest.

²⁶ In the previous programming period EC Reg. 1260/1999 - Article 44 states that the performance of each programme in the form of an operational programme (OP), a single programming document (SPD) or their priorities, should be assessed ‘on the

However, the regulation explicitly states that each priority axes of an operational programme should include information regarding the outputs and results it aims to achieve.²⁷

Other instruments contributing to a performance-based approach

Strategic reporting and evaluation are also tools of a management of the funds based on performance:

- Strategic Reports²⁸ drafted by the Member States and the Commission provide an opportunity to report on the progressive achievement of objectives.
- Evaluations²⁹ realised ex ante by the Member States and ex post by the Commission. In addition to these, an ongoing evaluation is carried out "when necessary". Evaluations establish an economic conditionality of a sort as far as they can bring about a modification in financial allocation.

Indirect reference to the performance of the rural development programmes can be found for rural policy in Art 79 of EC Regulation 1698/2005 which states that the Managing Authority and the Monitoring Committee should monitor the quality of programme implementation by referring to financial, output and result indicators. Moreover, in the context of the strategic approach to EAFRD programming, a system of common output, result and impact indicators has been designed in cooperation between the Commission and the Member States. This system aims to provide information on the performance of EAFRD interventions through the establishment of an on-going evaluation system and increased possibilities to exchange information on evaluation issues at national and EU level. At the same time, it allows to strengthen the link between the way the support is implemented in the Member States and the associated EU priorities.

The complete common indicators list, guidance on the choice and use of indicators and descriptive fiches for baseline, output, result and impact indicators as well as a list of examples of additional indicators are also provided.³⁰

Concerning the fisheries policy, guidelines from DG Mare stress that the annual reports on implementation is explicitly designed to be central in the process of reviewing the performance of the EFF operational programmes.³¹

basis of a limited number of monitoring indicators reflecting effectiveness, management and financial implementation and measuring the mid-term results in relation to their specific initial targets.'

²⁷ EC Reg. 1083/2006 Art 37, EC Reg. 1080/2006 Art 12.4.

²⁸ Articles 29 and 30 of Regulation 1083/2006. The first strategic reports are due from Member States at the end of 2009 with a synthesis to be prepared by the Commission in April 2010.

²⁹ Articles 47 - 49 of Regulation 1083/2006

³⁰ European Commission, DG Agri, rural Development 2007-2013, Handbook on common monitoring and evaluation frame work, Guidance Document, Brussels 2006.

³¹ European Commission, DG Mare, Note on Treatment of the EFF Operational Programmes.

I5 – Financial conditionality – conditions linked to expenditure

Expenditure co-financed by the Structural Funds, as well as by the EAFRD and EFF Funds, is subject to a system of financial conditionality put in place by the European Commission in order to control the financial performance of delivery in the Member States.

The principles of the automatic decommitment rule

The automatic decommitment (or “N+2/N+3”) rule is the expression of this financial conditionality. The principle is that at budgetary level, the Commission commits funding for each programme in annual tranches (annual breakdown) distributed over the programming period. If these amounts for the year N have not been certified by the 31 December of year N+2/N+3, the unspent funds are deducted from the sums initially planned. The sum automatically decommitted is “lost” for the programme as it is not possible to transfer the unspent funds to the next year. The consequence is a reduction of the overall funding for the programme.

For the 2007-2013 programming period, the application of this rule does not change with respect to the previous programming period. However, according to the regulatory texts, some arrangements and a more detailed description of the rule itself have been introduced.

As far as cohesion policy is concerned, the provisions concerning automatic decommitment are laid down in Articles 93 to 97 of Regulation (EC) N° 1083/2006. Article 93 sets the general principles of automatic decommitment and acknowledges exceptions for the “Member States whose GDP from 2001 to 2003 was below 85% of the EU-average in the same period”³², by stating that for the first years of implementation (2007 to 2010 only), the period for automatic decommitment is extended to three years, while for the other years, the N+2 rule remains applicable. Such flexibility is not foreseen in the rural development and fisheries policy framework.

Other exceptions are foreseen, for cohesion policy, as well as for rural development and fisheries policies. In the case of any legal proceedings or an administrative appeal having suspensory effect, the period for automatic decommitment shall be interrupted, in respect of the amount relating to the operations concerned and for the duration of those proceedings or that administrative appeal. The only condition required is that Member State sends the Commission information stating the reasons by 31 December of year N + 2 (or N+3 in the exceptions foreseen by the cohesion policy regulatory framework)³³.

Specific rules are also provided by the General regulation concerning cohesion policy, with regards to the application of automatic decommitment in the case of the treatment of a major project or a state aid scheme³⁴.

³² These Member States are the following: Czech Republic, Greece, Cyprus, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Slovenia and Slovakia.

³³ EC Reg. 1083/2006 Art 95; EC Reg. 1290/2005 Art 29.4; EC Reg. 1198/2006 Art 92.

³⁴ In this case the automatic decommitment shall be reduced by the annual amounts concerned by such major projects or aid schemes. For these annual amounts, the starting date for the calculation of the automatic decommitment deadlines shall be the date of the subsequent decision authorising such major projects or aid schemes (EC Reg. 1083/2006 - Art.94).

The procedure for the application of the decommitment rule

The procedure for the application of the decommitment rule is the same for all the funds: it is up to the Commission to inform Member State and the authorities concerned in “good time” whenever there is a risk of application of the automatic decommitment rule and, if it is the case, also to communicate the amount of the amount at risk of automatic decommitment. From the receipt of this information, a Member State has two months to agree on the amount or submit its observations. The automatic decommitment procedure will be carried out by the Commission not later than nine months after the 31 December of year N+2 (or after the 31 March 2017, in the case any declaration of expenditure for the budget still open on 31 December 2015 has been submitted to the Commission)³⁵.

The calculation of the amount automatically decommitted is also similar across the three policy fields. The same exceptions apply to the budget committed by all the Funds³⁶. The calculation of the automatic decommitment should disregard:

- that part of the budget commitment for which an application for payment has been made but whose reimbursement has been interrupted or suspended by the Commission on 31 December of the second (or third year, in the case of cohesion Policy only) following the year of the budget commitment;
- that part of the budget commitment for which it has not been possible to make an acceptable application for payment for reasons of force majeure seriously affecting implementation of the operational programme/rural development programme.

In addition, the cohesion and fisheries policies regulatory frameworks also include the following exceptions:

- that part of the budget commitment for which an application for payment has been made but whose reimbursement has been capped in particular due to a lack of budget resources.

Submission of major projects and aid schemes for approval can postpone the decommitment deadline for the associated amounts in cohesion policy.

³⁵ EC Reg. 1083/2006 Art 97, EC Reg. 1290/2005 Art 29.6 and 7; EC Reg. 1198/2006 Art 94.

³⁶ EC Reg. 1083/2006 Art 96; EC Reg. 1290/2005 Art 29.5; EC Reg.1198/2006 Art 93.

16 – The role/impact of eligibility rules

The aim of the eligibility rules, governing the use of the Funds, is to ensure that the aid delivered by each Fund (ERDF, ESF, CF, EAFRD, EFF) is effectively in compliance with the scope of assistance³⁷.

Contrary to the 2000-2006 programming period, the legal basis for the cohesion Policy, in 2007-2013 period, establishes only a limited list of eligibility rules at the EU level. Eligibility rules are, in fact, largely determined by the national eligibility rules³⁸ defined by the Member States themselves, whereas the Community legislation provides only for limited rules for the ineligible expenditure under the ERDF, ESF and CF and limited eligibility rules for the European Territorial Cooperation³⁹ programmes (because of the necessity to harmonise rules between Member States). The same applies for the rules on the eligibility of expenditure under the EAFRD and EFF Funds⁴⁰, even if in these cases more detailed rules are laid down at community level, thus limiting Member States' room for manoeuvre.

In what follows, a comparative overview of the main articles concerning the different dimensions of eligibility is presented.

Geographical location

The criteria for the eligibility of Member States and regions for co-financing from the ERDF, ESF and CF under the three Objectives "Convergence", "Regional Competitiveness and Employment" and "European Territorial Cooperation" are laid down in Articles 5-7 of the general regulation (EC) No 1083/2006. All regions not declared eligible for the Convergence Objective (art 5) and Transitional support (art 8) are eligible for the Regional Competitiveness and Employment Objective (Article 6 of Regulation (EC) No 1083/2006).

³⁷ As stated in the EC Regulation 1080/2006 - Art 3, the ERDF shall contribute towards the financing of: (a) productive investment which contributes to creating and safeguarding sustainable jobs; (b) investment in infrastructure; (c) intervention supporting regional and local development; (d) technical assistance. On the contrary, ESF is focused on increased investment in human capital(EC Reg. 1081/2006 Art 3). Cohesion Fund assistance is instead addressed to finance trans-European transport networks and to intervene in areas related to sustainable development which clearly presents environmental benefits, namely energy efficiency and renewable energy and, in the transport sector outside the trans-European networks (EC Reg. 1084/2006 - Art 2). The EFF may provide assistance, complementary to the other Community instruments, for the sustainable development and improvement of the quality of life in fisheries areas eligible as part of an overall strategy which seeks to support the implementation of the objectives of the common fisheries policy, in particular taking account of its socio-economic effects. (EC Reg. 1198/2006 Art 43.1). The EAFRD is addressed to the promotion of sustainable rural development throughout the Community, in a complementary manner to the other Community instruments, in order to contribute to achieving of the following objectives: (a) improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation; (b) improving the environment and the countryside by supporting land management; (c) improving the quality of life in rural areas and encouraging diversification of economic activity. (EC Reg. 1698/2005 Art 3-4).

³⁸ EC Regulations 1083/2006 Art 56.4.

³⁹ As stated in the Art 13.1 of the EC Regulation 1080/2006 the relevant national rules are agreed by the participating Member States, except where eligibility rules have been laid down at Community level. A series of common eligibility rules for cooperation programmes is laid down in Articles 48-53 of the Implementing Regulation (1828/2006). They deal with financial charges and guarantee costs (Art 49), expenditure by public authorities (Art 50), in-kind contributions (Art 51 1.), overheads (Art 52) and depreciation (Art 53).

⁴⁰ EC Regulations 1698/2005 Art 71.3, 1198/2006 Art 55.4.

As far as fisheries policy is concerned, the entire territory of the Community is eligible for co-financing⁴¹. Regulation concerned (Articles 12 and 13 of Reg. 1198/2006) states also that a significant concentration of the available resources should be allowed to the regions eligible under the Convergence Objective and that Member States should design the areas eligible for payments supporting the sustainable use of fisheries areas according to the criteria laid down at Community level⁴². Similar wording are found in the regulation concerning the rural development policy⁴³.

Scope of intervention: eligible activities and excluded costs

Eligible activities, cross-financing and demarcation

Within the general framework for the cohesion Policy set by Reg. 1083/2006, the range of activities eligible for co-financing from the Funds is set out in the Fund-specific regulations. The ranges of possible activities are different for the three Funds.

A comparative overview of the activities eligible under the three policies concerned confirms that eligibility change with the concerned activities. This means that if an activity is eligible for co-financing, for example, from ERDF, the rules concerning eligible expenditure laid down at Community level by the ERDF Regulation (1080/2006) should be applied.

However, there is a degree of flexibility (up to 10% per priority axis⁴⁴) for funding activities normally only eligible for co-financing from ERDF or ESF from the other Fund, where it is necessary to achieve the objectives defined for the operational programme and priority axis. DG Regional Policy and DG Employment⁴⁵ define this flexibility an option offered to the Member States in order to facilitate the implementation of single Fund operational programmes. However, to maintain the distinctive features of the ERDF and the ESF, as set out in the EC Treaty, such cross-financing between funds may only be complementary. This means that one could never finance an entire priority axis in an operational programme dedicated to the actions of the other Fund, but only limited operations, projects or parts of projects that belong to the intervention field of the other Fund, when cross-financing occurs, the application of the expenditure rule can be described as follows: where an OP is financed by the ESF, a specific project financing ERDF-type measures (such as infrastructure or equipment) must follow ERDF rules on the eligibility of the expenditure and vice versa.

The provision of demarcation criteria between funds is required. ERDF and EAFRD Regulations state that Member States should set the demarcation criteria for the operations supported by the

⁴¹ EC Regulation 1198/2006 Art 2 - 1. The measures provided for in this Regulation shall apply in the entire territory of the Community. 2. By derogation from paragraph 1, for assistance provided under Chapter IV of Title IV relating to the sustainable development of fisheries areas, Member States shall select the eligible areas on the basis of the criteria laid down in Article 43(3) and (4).

⁴² EC Regulation 1198/2006 Art 43 - (...) Support granted under paragraph 1 may include measures provided for in Chapters I, II and III with the exception of measures provided for in Articles 23 and 24. When support is granted for operations corresponding to these measures, the relevant conditions and the scales of contribution per operation laid down respectively in Chapters I, II and III and Annex II shall apply. 4. Beneficiaries of support provided for in points (b) and (c) of paragraph 1 and in paragraph 2 should be either workers in the fisheries sector or persons with a job linked to the sector.(...).

⁴³ EC Regulation 1698/2005 art 50 (2) and (3).

⁴⁴ This maximum is raised to 15% by Article 3(7) of the ESF-Regulation (social inclusion priority) and by Article 8 of the ERDF-Regulation (sustainable urban development).

⁴⁵ European Commission, DG Regional Policy and DG Employment, Programming Period 2007-2013: Aide-Memoire For Desk Officers, November 2006.

ERDF/EAFRD and those supported by the other Community support instruments in each operational programme.⁴⁶ The EAFRD Regulation contains also a detailed description of measures (see EC Reg. 1698/2005 Art. 52 – 59) which may pre-determine, partially or fully, the division of tasks between the Funds. Detailed rules on the typology of measures⁴⁷ that should be supported under the EAFRD in order to improve the competitiveness of the agricultural land and forestry sector are also laid down in the Council Regulation on rural development (EC Reg. 1698/2005)⁴⁸. According to the joint Agri-EmpI-Regio guidance note⁴⁹ for desk officers on complementarity of actions financed by Structural Funds and the Rural Development policy, establishing a demarcation line is the responsibility of the Managing authority.

As far as fisheries policy is concerned, information on demarcation with similar activities financed by the EAFRD and by the Structural Funds, should be included in the operational programme for each priority axis⁵⁰. A clear description of the measures eligible under the EFF can be also found in the fisheries regulation (EC Reg. 1198/2006 Art 25 to 45).

Categories of not eligible expenditure

Restrictions on the categories of expenditure that can be co-financed from the different Funds are foreseen. For example, interest on debt and Value Added Tax (VAT) are, in principle, not eligible for contribution from these funds. However, concerning the latter, there are some minor variations in the approaches followed by cohesion and rural development policies. In the case of Structural Funds, VAT, which is recoverable by whatever means, is ineligible, even if it is not actually recovered by the final beneficiary or individual recipient. The public or private status of the final beneficiary or the individual recipient is not taken into account for the determination whether VAT constitutes eligible expenditure in application of the provisions of this rule. Differently, in rural development policy, Article 71 of Reg. 1698/2005 provides that VAT is not eligible for an EAFRD contribution. However, non recoverable value added tax becomes eligible when it is genuinely and definitively borne by a beneficiary other than a non taxable person.⁵¹

⁴⁶ In relation to the possibility of overlapping the Article 9 of the ERDF Regulation states that “where an Operational Programme supported by the ERDF targets operations also eligible under another Community support instrument, including Axis 3 of the European Agricultural Fund for rural Development (EAFRD) and the sustainable development of coastal fishing areas under the European fisheries Fund (EFF), the Member States shall set out in each Operational Programme the demarcation criteria for the operations supported by the ERDF and those supported by the other Community support instruments.” Member States and regions shall ensure complementarity and coherence between the actions co-financed. EC Reg. 1698/2005 Art 60: Where a measure falling within this section targets operations eligible also under another Community support instrument, including the Structural Funds and the Community support instrument for fisheries, the Member State shall set in each programme the demarcation criteria for the operations supported by the EAFRD and those supported by the other Community support instrument.

⁴⁷ EC Reg.1698/2005 Art 20 – 49.

⁴⁸ Further guidance can be found in a note from DG Agri, stating that that through Article 68 of Regulation (EC) No 73/2009 on direct support to farmers, Member States may utilise up to 10% of their national budget ceilings for direct payments for specific environmental measures, improving the quality and marketing of products or supporting some sectors in disadvantaged regions or vulnerable types of farming. For each individual measure, eligibility conditions are defined at Member State level. European Commission, DG Agri, Note to Ms. C. Day, Secretary General - Working Group “Budget Delivery” - Contribution Of Dg Agriculture And rural Development.

⁴⁹ European Commission, DG Agri, Empl, Regio, guidance note on coherence and complementarity of actions financed by Structural Funds and the Rural development policy, Brussels 2007.

⁵⁰ EC Reg.49872007 Annex I (6) (b).

⁵¹ As regards the EAFRD and EFF funds, it is considered eligible the non recoverable value added tax when it is genuinely and definitively borne by a beneficiary other than non-taxable persons referred to in the first subparagraph of Article 4(5) of the Sixth

Similarity can be found between Structural Funds and EAFRD Regulation in the conditions⁵² that in-kind contributions of a public or private beneficiary should fulfil in order to be considered as eligible expenditure.

Besides the examples above, the restricted list of not eligible expenditure varies depending on the Fund. By way of illustration, purchase of equipment is not eligible in the case of the ESF whereas in the case of the ERDF or the CF it depends on the national eligibility rules (and, as a consequence, is largely eligible). Art 7 of the ERDF Regulation (1080/2006) and Art. 3 of the Cohesion Fund Regulation (1084/2006) declare not eligible for contribution also the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned.

Further detailed eligibility and administrative provisions (Reg. 1974/2006 Art 48-56) are laid down at community level for the rural development measures (Reg. 1974/2006 Art 14-47). For example, Art 49, Reg. 1974/2006 states that interest rate subsidies for loans may be co-financed by the EAFRD, and in this case Member States should indicate the calculation method and future value hypotheses to be used in calculating the capitalised value of outstanding interest rate subsidy as well as the arrangements for continuing transmitting the aid to the beneficiaries in the programme. Another relevant rule concerns the possibility for the EAFRD to co-finance expenditure in respect of an operation comprising contributions to support venture capital funds, guarantee funds and loan funds.

Finally, indications are provided at Community level concerning the documentation required on eligible expenditure. In this regard, as far as cohesion policy is concerned, Reg. 1083/2006 states that for each priority axis, the total amount of eligible expenditure paid by beneficiaries in implementing the operations and the corresponding public contribution paid or due to be paid to the beneficiaries should be declared. The same applies to the statement of the eligible expenditure under the EFF fund (EC Reg. 1198/2006 Art 78). With regard to the EAFRD fund, some important difference is noted. While for cohesion and fisheries policies, the expenditure declared can regard the amounts due to be paid, in rural development policy, one should declare only the expenditure actually paid to beneficiaries⁵³. (see also Fiches R1 and F1).

Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. Regulation 1198/2006 Art the Art 55 and in the Regulation 1698/2005 Art 71 respectively.

⁵² EC Regulation 1828/2006 Art 51 1. and EC Regulation 1974/2006 Art 54: (...) the contributions consist in the provision of land or real estate, equipment or raw materials, research or professional work or unpaid voluntary work; the value of the contributions can be independently assessed and verified. In the case of provision of land or real estate, the value shall be certified by an independent qualified expert or duly authorised official body. In the case of unpaid voluntary work, the value of that work shall be determined taking into account the time spent and the hourly and daily rate of remuneration for equivalent work

⁵³ EC Reg. 883/2006 Art. 16 Without prejudice to the special provisions on declarations of expenditure and revenue relating to public storage referred to in Article 6, expenditure and assigned revenue declared by the paying agencies in respect of a given month shall correspond to payments and receipts actually effected during that month. That expenditure and revenue shall be entered in the accounts of the EAFRD budget in respect of financial year 'N' beginning on 16 October of year 'N-1' and ending on 15 October of year 'N'. (..)

EC Reg. 1290/2005 Art 11: Save provision to the contrary under Community legislation, payments relating to the financing provided for under this Regulation or to amounts corresponding to the public financial contribution under the rural development programmes shall be disbursed in full to the beneficiaries.

For EFF there is a specific note on the eligibility of VAT that clarifies the provision. transmitted via CIRCA to the MS.

Period of eligibility

With regards to Structural Funds and European Fisheries Fund, the period during which expenditure must take place in order to be eligible for contribution is between the date of submission of the operational programme to the Commission or 1 January 2007 and 31 December 2015⁵⁴. As far as EAFRD is concerned, expenditure is eligible for contribution if the relevant aid is actually paid by the paying agency between 1 January 2007 and 31 December 2015.

As far as the temporal limitation of the eligibility of expenditure is concerned, an important remark has to do with technical assistance expenditure. It should be noted that while the General Regulation defines the scope of technical assistance activities, article 46 of Reg. 1083/2006 does not set out an explicit temporal limitation on the period to which technical assistance expenditure co-financed from the 2007-2013 financial envelope should relate. A note from DG Regio and DG Employment⁵⁵ and a similar note from DG Mare, clarify this question by stating that the technical assistance budget of the 2007-2013 programmes may co-finance technical assistance for the management expenditure for 2000-2006 programmes in clearly defined cases⁵⁶, only if technical assistance expenditure is incurred after the starting date for the eligibility of expenditure under an intervention of the 2007-2013 programming period and/or if there is a clear and demonstrable link between a programme of the 2007-2013 period and that of the 2000-2006 period in terms of geographical scope, field of intervention, or administrative systems regarding management and control.

As regards technical assistance expenditure under the 2007-2013 programming period, the eligibility rules are defined to a large extent at national level (Article 56(4) of the EC Reg. 1083/2006 concerning cohesion policy). A particular case concerns the ESF⁵⁷.

As far as fisheries policy is concerned a wide range of interpretative note specific to EFF provisions have been developed.⁵⁸

Clarity of eligibility conditions for general public/potential beneficiaries: publicity and information measures

Potential beneficiaries

⁵⁴ EC Regulation 1083/2006 Art 56.1; EC Regulation 1698/2005 Art 71.1; EC Regulation 1198/2006 Art 55.1

⁵⁵ European Commission, DG Regio and DG Employment, Financing, by the 2007-2013 technical assistance at location of the technical assistance tasks of the 2000-06 programmes, Brussels 2009.

⁵⁶ TA activities relating to the closure of the 2000-2006 programming period and incurred after the final date for the eligibility of expenditure under the 2000-2006 programming period; TA activities carried out after 31/12/2008 but before the extended final date for the eligibility for those 2000 – 2006 programmes where the eligibility period has been extended because of in particular significant changes in the socio economic situation and the labour market; In exceptional cases for the TA activities carried out before 31/12/2008, where no TA credits are left under the 2000 – 2006 operational programmes and on the basis of the latest spending plans the credits in other priority axes are exhausted so that for the purposes of TA the operational programme in question cannot benefit from the 10% flexibility at priority level.

⁵⁷ Article 11.2 (c) of the ESF Regulation explicitly excludes the purchase of furniture, equipment, vehicles, infrastructure, real estate and land as eligible expenditure. This exclusion also applies where such expenditure is incurred under technical assistance. Technical assistance activities under an ESF programme giving rise to some of these costs can, however, be co-financed indirectly via the depreciation provisions of Article 11(3)(c) of the ESF Regulation or directly in the context of the 10% flexibility facility relating to the ESF and the ERDF (Article 34.2 of the General Regulation).

⁵⁸ E.g., the specific notes on the eligibility of expenditure and on the VAT eligibility; in addition a wide range of interpretative note specific to EFF provisions have been developed.

Citizens have the right to be informed on the funding opportunities offered jointly by the Community and the Member States through the Funds and the authority in charge of managing the assistance has the duty to publicise the steps that a potential beneficiary should take to submit an application for funding and the selection criteria that will be used.

This is a key requirement both in Structural and Cohesion Funds contributions, as well as fisheries and rural development ones. All the regulations, concerning these funds, clearly and explicitly state for the managing authorities the responsibility to provide potential beneficiaries with adequate information on their rights and obligations in the applications for funding.

Starting from the regulatory basis, similarities can be identified in SFs, EAFRD, as well as EFF regulations with regards the information and publicity activities to be undertaken under each Fund for the potential final beneficiaries of the assistance.

According to these regulations, information and publicity activities have to be carried out by the Managing Authority and addressed to the potential beneficiaries. They are similar also in the content of the information to be provided: the eligibility conditions and/or criteria to meet for receiving the assistance, procedure to follow for qualifying a financing under an operational programme, time and procedures for examining the applications for funding, and the main contacts able to provide information on the operational programme⁵⁹.

General Public

In the framework of the management of the Structural Funds, as well as of the EAFRD and EFF funds, a key requirement for the Managing Authority is to hold at least one major publicity event per once a year, to publish all the names of beneficiaries and the community contribution granted to them⁶⁰. These are requirements which are aimed to increase the knowledge of the general public rather than the beneficiaries about the role played by the Community.

As stated in the Guidance document on a common methodology for the assessment of management and control systems in the Member States, the clarity of eligibility rules is among the key requirements⁶¹ identified by DG Regio and DG Employment, in relation to the Managing Authority activities. This can be seen also in the guidelines⁶² provided on certain practical aspects that should serve as a reference for the Member States for the correct application of Art 13 Reg. 1828/2006⁶³. This note establishes that managing authorities are responsible for ensuring that operations selected for funding are in compliance with the Community and national eligibility rules for the whole of the implementation period. In this regard, they are in charge of informing beneficiaries of the specific conditions concerning the products or services to be delivered under the operation, the financing plan, the time-limit for execution below which costs are eligible for reimbursement and the need to keep

⁵⁹ EC Regulation 1828/2006 Art 5; EC Regulation 1974/2006 Annex VI; EC Regulation 1198/2006 Art 51; EC Regulation 498/2007, Article 29 to 32.

⁶⁰ EC Regulation 1828/2006, Articles 7 and 8;

⁶¹ European Commission, DG Regio and DG Employment, Guidance document on a common methodology for the assessment of management and control systems in the Member States (2007-2013 programming period)

⁶² Guidance document on management verifications to be carried out by Member States on operations co-financed by the Structural Funds and the Cohesion Fund for the 2007 – 2013 programming period.

⁶³ This article deals with the responsibilities of the Managing Authority in ensuring full information to the beneficiaries and in verifying that the administrative, financial, technical and physical aspects of operations are those appropriate.

records to demonstrate how overheads were calculated and allocated. The managing authority must also verify itself that the beneficiary has the capacity to fulfil these conditions before the approval decision is taken. Criteria for assessing this capacity can have to do with the type of operations or the financial standing of the beneficiary or the qualifications and experience of its staff and its administrative and operational structure.

17 – Proportionality

Proportionality is a general principle which has underpinned the European Community since 1957. It was clearly laid down in Article 5 of the Treaty establishing the European Community and states that the Community should not go beyond what are necessary to achieve the objectives of the Treaty⁶⁴. Across the structural policies, however, this principle is treated differently and different can be the ways to achieve proportionality in the delivery of the policies.

Cohesion and fisheries: proportionality according to the financial dimension of the operational programmes

Cohesion and fisheries policies are very similar in their provisions concerning the proportionality principle. Their articles mostly use the same words and the implementing regulation of the EFF (Reg. 498/2007) explicitly makes reference to the general provisions of the SFs.

These policies has applied the principle of proportionality by establishing different procedures for the reporting, monitoring, evaluation, audit and control of an operational programme according to its financial dimension. Thus, the financial size of a programme affects the application of rules and procedures.

The regulatory basis of cohesion and fisheries policies states that proportionality principle refers to the possibility for the Commission and the Member States to apply different arrangements for programmes having a relatively small financial dimension, i.e.:

- for cohesion policy: total eligible public expenditure below EUR 750 million, not more than 40% of which co-financed by the Commission (Reg. 1083/2006, whereas 74);
- for fisheries policy: total eligible public expenditure below EUR 90 million (Reg.498/2007, whereas 2).

For these small-sized operational programmes, simplified requirements apply firstly for audit and control procedures. In particular, the audit authority of the Member States does not need to submit an audit strategy to the Commission, but only an annual audit opinion. As regards controls, Member States have the possibility to apply national (and not Community) rules for bodies and procedures responsible for the function of the managing authority, concerning the verification of the co-financed expenditure declared, of the certifying authority, in the drawing up and certifying expenditure claims, and of the audit authority. Moreover, Member States do not have to designate certifying and audit authorities but they can determine who can perform such functions under national rules.

Secondly, proportionality between resources and objectives applies for the establishment of an evaluation and monitoring plan of an operational programme. Again, the methodologies used reflect the scale and the financial resources of the programme. Hence, the number and typology of indicators,

⁶⁴ Proportionality became one of the fundamental principles of the jurisprudence developed by the European Court of Justice since 1970, when it affected EU law for the first time. In the *Internationale Handelsgesellschaft* case (number 11/70, dated 17 December 1970) the judgment of the Court of Justice states that: "A public authority may not impose obligations on a citizen except to the extent to which they are strictly necessary in the public interest to attain the purpose of the measure".

which affect the overall cost of the evaluation procedure, should be proportional not only to the complexity of the programme, but also to the expenditure foreseen.

Finally, another application of the proportionality principle is the lump sum system, which applies to small operations, independently from the financial size of a programme. Lump sum system consists of the possibility to reimburse all or part of eligible costs of an operation financed by the Structural Funds on a basis of a pre-established and justified lump sum. Lump sums cannot exceed 50,000 euro. This opportunity encourages particularly small operations, which may be reluctant to apply at Structural Funds, since the financial rules governing the ordinary system of reimbursing real costs may not be easy to handle⁶⁵. Also, as far as small operations in the field of infrastructure investments are concerned, the proportionality principle applies by derogating the provisions on revenue generating projects for all operations the total cost of which is less than EUR 1,000,000.

Rural development: proportionality applied to financial corrections

In rural development policy references to proportionality can be found particularly in the provisions on the financing of the common agricultural policy and they mainly concern payment procedures.

Whenever the Commission decides to reduce or suspend payments to the Member States, because of unsatisfactory compliance with the Community rules or improper use of funds (Reg. 1290/2005, Art. 17 and Art. 27), or whenever the payments are ineligible for Community financing due to overrun deadlines (Reg. 1290/2005, Art. 16), the principle of proportionality should be taken into consideration

In rural development policy, the principle of proportionality applies in particular in the field of financial corrections. Indeed, financial corrections are commensurate to the action for which the correction is necessary. They are based on established guidelines for the calculation of:

- financial consequences of inquiries undertaken outside the clearance of accounts programme, in particular by the Frauds and Irregularities Unit;
- financial consequences of inquiries which establish that there are deficiencies in a Member State's control procedures;
- corrections for payments made after the date limit, and for the payment of claims submitted after the date limit⁶⁶.

Financial corrections can be applied under all types of rural development programmes, regardless of the financial dimension of the latter; in this sense DG Agri's approach to the proportionality principle can be said to be "standardized".

⁶⁵ Nevertheless while the ceiling for lump sums is 50,000 euro, they can be granted to bigger projects as well. Additionally, flat rates and unit costs do not have limits.

⁶⁶ For example, it is proposed that when Member States have allowed individual producers to submit late claims which are otherwise regular, corrections should be progressive. In cases where a Member State has accepted a claim submitted beyond the time limit, and where it would have been appropriate for the Member State to apply the principle of proportionality, a maximum of 25 days lateness can be accepted, subject to a penalty of 1% per working day.

I8 - Financial engineering

For the period 2007-2013 the scope for financial engineering under the structural policies has been significantly enhanced by the Commission. The regulatory framework has been enriched with the notion and the function of the “holding fund”, while incentives have been offered to Member States to implement the policies through financial engineering. For example, the possibility to accelerate the implementation of financial engineering by awarding directly the holding fund tasks to the EIB or the EIF has been now introduced, although benefits and possible downsides are still to be verified. Also, in the context of the SFs, new financial engineering initiatives like JEREMIE and JESSICA have been launched, following the renewed Lisbon agenda for growth and jobs. In particular, JEREMIE has been created to target improved access to finance for SMEs and to finance new business creation, while JESSICA aims at supporting investment in sustainable urban development and regeneration. In mid 2009, JEREMIE was implemented in 12 Member States either at national or at regional level for a total amount of €2.7 billion to be invested in SMEs. Agreements with JESSICA for fund management or loans have been signed between the EIB and the regions of Wielkopolska (PL), Western Pomerania (PL), Andalusia (ES), Lithuania, Portugal, London (UK), Northwest England (UK), Sicily (IT), Moravia Silesia (CZ) and between national financial institutions in the Land of Brandenburg (Germany), Estonia and East Midlands (UK) .

The architecture for co-financing an operation comprising contributions to financial engineering instruments for enterprises - such as venture capital funds, guarantee funds and loan funds - is basically the same for the three policies concerned. Only minor differences exist in the regulations of the Funds and they mainly relate to the different scope of application of the Funds. For example, in the case of cohesion policy the use of financial engineering is limited to the areas of business development, urban development and energy efficiency.

The following aspects, characterising the implementation of the financial engineering operations within the shared management system of the structural policies, may be picked up for further analysis:

- Selection of financial engineering instruments
- Holding funds
- Eligible management costs
- Recycling of contributions

Selection of financial engineering instruments

The arrangements depicted below on the selection of financial engineering instruments apply commonly to cohesion, fisheries and rural development policies.

Where operations comprising financial engineering instruments are financed by an operational/rural development programme, business plans of the candidate financial engineering instruments must be submitted and evaluated by the managing authority. The plan should specify the targeted market, criteria, terms and conditions of financing, operational budget of the fund, ownership and part-financing partners, requirements as to the professionalism, competence and independence of the

management, etc. A transparent procedure for the selection of financial engineering instruments, based on specific and appropriate criteria to be related to the objectives of the operational programme and approved by the monitoring committee, should be applied by the managing authority.

Once selected the engineering instrument, a funding agreement⁶⁷ must be signed between the managing authority and the instrument itself. Where possible, more than one financial engineering instrument should be selected, with a view to producing the best possible leverage effects.

Managing authorities must assess whether their contribution to a financial engineering instrument is a public procurement of services governed by public procurement law. In this case, managing authorities should act in accordance with applicable Community and national rules. They must also comply with any applicable State aid rules concerning such contributions (Art. 43 Reg. 1083/2006 for example requires managing authorities to "take precautions to minimise distortion of competition in the venture capital or lending markets").

Holding funds

The possibility to organise financial engineering instruments through holding funds is envisaged in cohesion and fisheries policies, and not in the rural development one.

Holding funds are defined as funds set up to invest in several venture capital, guarantee, loan (or urban development) funds. There are two options for implementing financial engineering operations organised through holding funds:

- the award of a public contract, in accordance with applicable public procurement law;
- the award of a grant, defined as a "direct financial contribution by way of donation", when the agreement between the national authority and the holding fund is not "a public service contract within the meaning of public procurement law" (Reg.1083/2006, Art. 43 and Reg. 498/200, Art 36).

When holding funds are implemented through the award of a grant, this can be given directly to the EIB or the EIF or - if pursuant to the national law compatible with the Treaty - to a national (or regional) financial institution. By designating the EIB or the EIF as potential holders of holding funds, the legislator has mandated these institutions to assist interested Member States in the implementation of specific financial engineering instruments designed to support economic and social cohesion throughout the 2007-2013 programming period.

When the grant is given to the EIB or EIF, public procurement procedure is not necessary. This is due to the fact that the relationship between the EIB/EIF and the Member States is governed by primary law in an exclusive, self-contained and institutional manner, and market-related public procurement rules do not apply within such scheme. In the other case, when a financial institution other than the

⁶⁷ The funding agreement should include at least the following: the investment strategy and planning; the monitoring of implementation procedure, in accordance with applicable rules; an exit policy for the contribution from the operational programme out of the financial engineering instrument; the winding-up provisions of the financial engineering instrument, including the reutilisation of resources returned to the financial engineering instrument from investments or left over after all guarantees have been honoured, that are attributable to the contribution from the operational programme (Reg.1828/2006, Art. 43(3); Reg. 498/2007, Art. 51(1) and Art. 35(2)).

EIB or EIF is chosen, national authorities will have to ascertain, on a case-by-case basis, whether the structure they are planning to implement is a grant or a public procurement and it is their responsibility to comply with any and all applicable laws.

Eligible management costs

Management costs eligible for the Funds may not exceed, on a yearly average, the ceilings set out in the regulatory provisions. By comparing the three policies concerned, there are small differences in the thresholds designed. Cohesion and fisheries policies have set up the following common limits:

- 2 % of the capital contributed from the operational programme to holding funds, or of the capital contributed from the operational programme or holding fund to the guarantee funds;
- 3 % of the capital contributed from the operational programme or the holding fund to the financial engineering instrument in all other cases, with the exception of micro credit instruments directed at micro enterprises;
- 4 % of the capital contributed from the operational programme or the holding fund to instruments directed at micro enterprises.

In addition, SFs regulations foresee the possibility to increase the above thresholds by 0.5% for the outermost regions.

As for EAFRD, management costs of funds should not exceed 3 % of the paid-up capital or 2 % in the case of guarantee funds, on a yearly average for the duration of the programme unless, after a competitive tender, a higher percentage proves necessary.

The rates indicated above to calculate the ceilings of management costs are applicable to contributions from operational/rural development programmes to both holding funds and financial engineering instruments. They must be intended as maximum rates, unless a competitive procedure reveals that higher ceilings are necessary.

Finally, DG Empl / Regio guidelines recommend that the funding agreements link the eligible management costs to the volume of funds contributed from operational programmes and actually disbursed to or committed for guarantees to enterprises, in order to produce an incentive for financial engineering instruments to be active in promoting development and expansion of enterprises, in particular SMEs.

Recycling of contributions

The arrangements in place on how to recycle resources returned from financial engineering instruments apply commonly to cohesion, fisheries and rural development policies, with the exception of private contributions in the framework of public-private partnerships, which are foreseen only by the SFs regulations and guidelines.

Financial engineering instruments should be in the form of actions which make repayable investments or provide guarantees for repayable investments in enterprises and, in the case of cohesion policy, in urban projects included into integrated plans for sustainable urban development.

Interest generated and/or resources returned to the operational/rural development programmes from investments undertaken by financial engineering should be re-used by the competent authorities of the Member States concerned for the benefit of small and medium-sized enterprises (or urban development projects). In the case of loan and venture capital funds, the resources returned include interest and loan repayments and capital gains, while in the case of guarantee funds they mainly consist of resources left over after all guarantees have been honoured.

DG Empl / Regio guidelines recommend that returned resources are re-used in the region covered by the operational programme and that re-use should be through financial engineering instruments or urban development projects, with a view to ensuring further leverage and recycling of public money.

Since SFs regulatory provisions for financial engineering under the period 2007-2013 offer opportunities and incentives to Member States to invest in public private partnerships along with the EIB and other financial institutions, financial engineering can be implemented with the participation of private actors. Such investments may take place both for holding funds and for selected financial instruments, such as venture capital, loan or guarantee funds. When a PPP is in place, any private contribution to a financial engineering instrument should be returned to the private entity that contributed for it, and not to the competent public authority of the Member State.

I9 - Transition between programming periods

With the opening of the 2007-13 programming period a new set of regulations has entered into force delineating a new design and structure of the structural policies. Thus, the issue of the transition between periods is not properly an arrangement per se of the shared management in place for the structural policies but rather a horizontal theme affecting all the dimensions of the policy delivery system.

While key differences between the two periods concerned have been highlighted – whenever possible – in the treatment of the single issues of shared management in the respective dimensions, we focus here on how the transitional procedures have been arranged in the three policy domains concerned. In other words, the analysis deals with the way adopted to provide Commission officers and Member States with adequate support in order to facilitate an effective implementation of the new systems, procedures and practices established. As for in other cases, different approaches can be identified: from the more structured one of the rural development policy to the more flexible approach followed by cohesion and fisheries policies.

Rural development: a deadline for the last 2000-2006 legal commitments

In the case of rural development policy, the transition issue deserved a specific regulatory framework. Reg. 1320/2006 lays down the rules for the transition from the rural development programming under regulations 1257/1999 and 1268/1999 to that established by regulation No 1698/2005. The provisions included have been drafted with the aim of promoting a common understanding of the new terminology and to guarantee a correct implementation of the new procedures. The main reason for which there is a special regulation for transition in the area of rural development is that some operations can last over years beyond a single programming period. In particular, agri-environmental payments entail long-term contracts and can have a financial impact on several programming periods so that they required detailed rules for transition.

The provisions are articulated into four sections (or “titles”):

1. Scope and definitions: it sets up the terminology framework to be applied for the purpose of the regulation.
2. Transitional rules for Reg. 1257/1999: in this section light is shed on specific aspects that changed with the entering into force of the new programming period; they relate to:
 - Measures co-financed by the EAGGF Guarantee Section;
 - Measures co-financed by the EAGGF Guidance Section and/or Guarantee Section;
 - Specific provision for agri-environment and animal welfare;
 - Expenditure under technical assistance.
3. Transitional rules for Reg. 1268/1999: they concern the provisions on how to treat expenditure related to former pre-accession measures which payments are to be made after 31 December 2006.

4. Final provisions: final remarks are made with an important reference to the annexed correlation table providing a grid of comparison of rural development measures under the previous regulations and axes and measures under the current one.

In accordance with the regulatory framework depicted above, Dg Agri has put in place transitional measures to declare expenditure under the current programming period and its new framework by applying the principle of a deadline for the last 2000-2006 legal commitments with the beneficiaries. Thus, the closure of the previous programming period had no overlaps with the opening of the current one.

Cohesion and fisheries policies: the two systems functioning in parallel for 2 years

Conversely to rural development, in cohesion and fisheries policies all operations should be formally finalised by the end of the financial horizon so generally there is less need for a specific regulation for transition. However due to the nature of decommitment rules, two programming periods run in parallel for 2 years (or in the case of 2000-2006, up to 2,5 years). No specific regulation is in place for the implementation of this "transitional system".

Focus: technical assistance between programming periods

Despite the lack of a special transitional regime, some issues in relation to transition have risen also in cohesion policy/fisheries policy, A note elaborated by DG Empl / Regio and further adopted by Dg Mare deals with the question of how to manage technical assistance expenditure during the time overlapping between the 2000-06 and 2007-13 programming periods. The regulatory provision, in fact, just defines the scope of technical assistance activities, but does not specify whether there are limitations regarding the period to which technical assistance expenditure should relate. The question in particular is about whether costs incurred after the final eligibility date of the 2000-06 period could be supported by the technical assistance under the 2007-2013 programming period. According to the interpretation provided in the note, technical assistance expenditure linked to the previous programming period is eligible when:

- the expenditure is incurred after the starting date for the eligibility of expenditure under an intervention of the 2007-2013 programming period; and
- such expenditure is consistent with the previous programmes. In other words there should therefore be a clear and demonstrable link between a programme of the 2007-2013 period and that of the 2000-2006 period in terms of geographical scope, or field of intervention, or administrative systems regarding management and control.
- Finally, national eligibility rules do not exclude eligibility of such expenditure.

The argument of the eligibility of the technical assistance expenditure between programming periods is also addressed in the rural development framework, but, in this case directly in the regulations and not in interpretation notes. According to Reg. 1320/2006 Art. 12 and Art.13, expenditure related to measures co-financed by the EAGGF Guidance and/or Guarantee Section and devoted to the ex post

evaluation of the previous programming period is to be considered eligible under the technical assistance component of the rural development programme in the current programming period.

Reporting, monitoring and evaluation

R1 – Reporting - level of detail of information on operations supplied by member states; general reporting requirements

Information about operations

According to Regulations, information about the operations supplied by member states relate to administrative details, financial expenditure (see also F2) or physical implementation (see also R2, R3 and R4) and are to be recorded, stored and provided to the Commission at different moments and with different purposes: they may be linked to interim or final payments, to reporting requirements (including monitoring and evaluation) or can be related to information that the Commission may request on the spot.

Information on financial expenditure

In order to get interim and final payments of the operations from the Commission, Member States must provide a set of documents allowing the commitment and payment of EU Funds (see Table below). Payment periods for rural development policy are different and shorter for cohesion and fisheries policies. For the former, declarations of expenditure must be provided more frequently are more detailed in terms of breakdown per category and level of expenditure (see Fiche F2).

Communication of information related to financial expenditure

		Recurrence	Content	Breakdown	Coverage	Format
REGIO/EMPL	Provisional forecast	Yearly	Total amount of forecasted expenditure paid by beneficiaries with receipted invoice	Total by MS	Current and subsequent financial year	
	Statement of expenditures	Yearly	Total amount of eligible expenditure paid by beneficiaries with receipted invoice	Priority axis of each OP	Previous year	Annex X Reg. 1828/2006
AGRI	Total monthly expenditure	Monthly	Statement with total expenditure/revenues effected/assigned and information on substantial difference from estimates	Total by MS	Previous month	Annex I Reg.883/2006
	Declaration of expenditure	Monthly	Declaration of expenditure with total expenditure/revenues effected/assigned and received in the preceding month and those received and related to the public storage	Per nomenclature of the budget by type of expenditure/revenues	Previous month	Annex II Reg.883/2006
	Set of documents for the booking to the community budget	Monthly	Statement per each paying agency with expenditure/revenues effected/assigned and estimated; statement of difference between declared and effected; evidencing accounts; set of tables	per nomenclature of the budget by type of expenditure/revenues	Previous month and estimates for the following two months	Annexes III, IV, V, VI, VII, VIII, IX Reg.883/2006

	Declaration of expenditure	Quarterly	Amount of eligible public expenditure for which the paying agency has actually paid the corresponding EAFRD contribution	By measure for each programme	Previous three months	Annex XI Reg.883/2006
MARE	Provisional forecast	Yearly	Total amount of forecasted expenditure paid by beneficiaries with receipted invoice	Total by MS	Current and subsequent financial year	
	Statement of expenditures	Yearly	Total amount of eligible expenditure paid by beneficiaries with receipted invoice	Priority axis of each OP	Previous year	Annex IX Reg. 498/2007

Data to be provided for checks

Besides regular communications to the Commission, Member States may provide details on operations on request of the Commission. This is envisaged by Art. 40 of Reg. 498/2007 for fisheries policy and Art. 14 of Reg. 1828/2006 for cohesion policy. No mention is made for similar arrangement under rural development. Data to be stored and provided on these occasions are codified and templates are provided (see Annex III Reg. 498/2007 and Annex III of Reg. 1828/2006). The main features of the information to be provided are:

- Disaggregation of data for age and gender of beneficiaries should be provided when relevant for fisheries policy and cohesion policies.
- NUTSIII level information of the location should be provided for fisheries policies, while Reg. 1828 of cohesion policy is not that explicit in respect of the NUTS level, mentioning code of region or area where operation is located/carried out (NUTS level or other, if appropriate) (see Annex II, table 5 and Annex III, field 4).
- Concerning the costs of the operations for cohesion policy, a distinction should be made for expenditure paid for the purchase of land and of housing; moreover, in the same policy domain it should be distinguished among expenditure reimbursed using simplified costs.
- Compared to the fisheries policy more details are requested on the expenditure side for cohesion policy, with also dates of last statement of expenditures, dates of verifications, dates of audits, body carrying out verifications and audit to be provided. This information is used for audit purposes and data requirements explicitly for the purpose of monitoring at the projects' level are not as detailed. Under the fisheries policy, more details are required concerning physical description: it asks for the state of implementation (encoded stages are identified), the physical quantity achieved⁶⁸ and indication of measure, action and implementation data (the latter being encoded data).
- For cohesion policy Annex II of Reg. 1828/2006 provides the categorization of Funds assistance. However, among all those categorization, only the location dimension is mentioned in Annex III for the list of data on operations to be provided to the Commission upon request.

Categorization of expenditures for information purposes

⁶⁸ The degree of achievement in percentage of the target for operations in case of completion was envisaged also for cohesion policy in the first formulation of the Annex II but has been cancelled in the corrigenda of the Implementation Regulation.

Within cohesion policy Member States have the duty to store and report to the Commission the indicative breakdown by category of the use of Funds at operational programme level, according to a codification provided in Annex II of the Implementing regulation. This is related in particular to the information provided within the Annual Implementation Report which should include tables with the cumulative allocation of Funds according to the five dimensions identified⁶⁹.

This data is used for information purposes only, enabling to report in a consistent way important details on the use of the Funds.

Another issue has to do with the presentation and form of reporting of those data, since a printed table presenting the range of combination of all the dimensions is not easily readable and usable. Moreover, entering data manually on the internet based interface available in 2008 is not feasible given the high number of operations. Therefore, Member States were asked to develop a 'web-service' based data transfer linked with SFC 2007. In the meantime, a standardized excel sheet provided by the Commission is submitted (as for Annex II Part C of the Implementing Regulation). The upload of those excel sheets as an attachment of the Annual Implementation Report is mandatory for the completion of the submission.

Another important source of data for information purposes is major projects, for which an encoding system of key information is in place. Annex XX provides the list of encoded information that should be provided on major projects at the moment of the application for co-funding.

For fisheries and rural development policies, a regulatory requirement asks to provide expenditure declarations on the basis of a specific nomenclature. While the Regulation for rural development policy refers to the nomenclature of the budget of the European Community, Annex III of Implementing regulation of DG Mare provides a standardized nomenclature of priority axes, Measures, Actions and Implementation data to be provided to the Commission upon request under Art. 40.

Reporting requirements

Different levels of reporting requirements, some specific for one policy domain only, are in place: annual implementation and strategic follow up. Annual audit and control reports are an additional level of reporting but they are treated in the Fiche F3.

Annual and final reports on implementation

For the three policy domains an Annual Implementation Report (AIR) (Annual Progress Report, APR, for rural development) is submitted electronically through the SFC2007 by the Member States by 30 June each year. It presents the output and results indicators contained in the monitoring system, with the financial execution tables, complemented by a qualitative analysis. The submission and acceptance of the report is the pre-condition for interim payments. The common rationale is that qualitative assessment must be based on facts and evidence and measured by financial and physical indicators. In addition, a final report is due for cohesion and fisheries policies by 31 March 2017 on the implementation of the operational programme (this does not apply to rural development).

⁶⁹ Priority theme, form of finance, territorial dimension, economic activity, location.

The regulatory requirements in terms of level of details of information required under the three policy domains are similar and relate to the same key issues: state of implementation, both from a physical and financial point of view, with quantifications as far as possible of monitoring indicators. Separate reporting is required for rural development about the evaluation activities. In particular, the on-going evaluation system asks for dedicated reports to be provided annually, with a summary to be included in the Annual Progress Report and submitted to the Monitoring Committee, and for year 2010 and 2015 such an annual report become mid-term and ex-post evaluation reports respectively. For cohesion policy, reporting about evaluation activities is expected in the Annual Implementation Reports.⁷⁰

The system of admissibility and quality checks are quite similar. A format for the annual implementation report is provided in Annex XVIII of the Implementing regulation for cohesion policy. Guidance notes however show some differences, mainly introduced in the new programming period:

- for cohesion policy, in line with the strengthened strategic approach, the report should also present the progress in the contribution to EU policies such as the Lisbon process and the European Employment Strategy;
- again for cohesion policy the report should demonstrate complementarity with other instruments (EAFRD, EFF, EIB, EIF), in particular for implementation arrangements ensuring demarcation and coordination of assistance financed by different financial instruments;
- Admissibility and validation is done via RDIS for the rural development and some checks are automatic in the IT system.
- For cohesion policy information on the progress of implementation is requested at the priority axis level, while in the fisheries policy progress is checked also at the measure level;
- For cohesion policy a section of the report should relate to progress in implementing major projects and to coherence with ESF programmes;
- For rural development standard tables for output and result indicators are mandatory.

Strategic reporting

At the strategic level:

- In line with the priority of strengthening the strategic approach cohesion policy includes the arrangements for strategic reporting for the first time in the period 2007-2013, to complement the annual reporting on implementation. Strategic reports are delivered twice during the programming cycle (end 2009 and 2012) and inform the Commission about the progress of the programme in contributing to the objectives of the cohesion policy, the Community Strategic Guidelines and the Guidelines for growth and jobs. It is intended to inform a high level political debate on the performance of the policy and should generate comparisons among member states. The Commission is then asked to prepare summaries to be submitted to the Council (Art. 30, Reg. 1083/2006). Strategic reports are prepared at the national level (which are especially valuable when the number of operational programmes implemented at the regional level is high).

⁷⁰ Reg. 846/2009 amending Reg. 1828/2006, Annex XVIII.

- A strategic summary report about the progress made in implementing the national strategic plan is also required for rural development, but it is due three times during the programming cycle (2010, 2012 and 2014).
- Fisheries policy's regulations foresee only a policy debate, without reporting requirements. fisheries' policy.

Strategic Reports should include a description of the socio economic situation and trends, updates on the achievements and future prospects in relation to implementation of the agreed strategy, eventual difficulties or delays in the implementation of the programme, responses to the proposals in the European Economic Recovery Plan and examples of good practice. An excel sheet should also be filled in with data on financial progress by operational programme.

R2 – Monitoring

Different features characterizing monitoring in the three policy fields concerned are addressed in the following: general arrangements; indicator system; composition, role and responsibilities of the monitoring committee; and the annual examination of programmes on the basis of annual reporting⁷¹.

General arrangements

The legal base for monitoring arrangements is broadly similar in the three policy domains. The general principle is that the monitoring committee and managing authorities shall ensure the 'quality' ('correctness' in the wording of the fisheries policies) of the implementation. Reference is made to indicators, namely financial, results and outputs indicators. Indicators are identified at the programming stage, and should be identified in the OPs together with the baseline values.

Indicator system

Cohesion and fisheries policies frameworks

In the framework of cohesion policy, monitoring is performed on the basis of financial indicators, results and output indicators⁷².

Annex XXIII Reg. 1828/2006 provides the data to be stored and used for communication to the commission about participants in ESF operations. In particular, data on participants should include breakdown by gender, status of the participants in the labour market, their age, belonging to vulnerable groups and educational attainment. This set of indicators is a rare example of a system of fixed core indicators in cohesion policy.

A dedicated working paper is available for cohesion policy on the setting up of indicators system for monitoring and evaluation. It provides definitions, guidelines and recommendations on how to define, measure and use programme indicators. Member States are free to identify and use the most appropriate monitoring indicators, following some recommendations:

- Indicators should be more strategic, with a focus on long term objectives
- They should be designed bearing in mind their different users and the use which should be made of them, as well as the different programming phases
- Member states should concentrate efforts on improving result indicators, especially those related to priority objectives
- Relevant indicators should enable to produce statistics that can be broken down by gender and size of the recipient undertakings

⁷¹ A related matter is the way monitoring results are reported – this specific issue is dealt with in fiche R4.

⁷² Guidance notes stress that while MS are now familiar with physical and financial indicators, the use and reporting of results and especially impact indicators (the latter not being a legal requirement of the general regulation of cohesion policy) is rare.

- The importance to focus on a small set of core indicators is stressed, special attention is given to: specific indicators for a programme (results indicators related to priority objectives or more general policy frameworks) and common minimum core indicators (physical and financial indicators useful to compare or aggregate data across similar programmes, priorities or measures). The Annex of the working document lists the common minimum indicators the Commission suggests to apply.
- Horizontal themes such as sustainable development or equal opportunities should be embedded in the general indicator system;
- Criteria for quality checks both for the indicator system and for individual indicators are suggested.

Rural development policy framework

A specific article of the general regulation deals with indicators⁷³ and specifies they should relate to financial execution, output, results and impact of the programmes. The same regulation sets the principle of a Common Monitoring and Evaluation Framework (CMEF), by means of which a limited number of indicators common to all the programmes should be identified and established⁷⁴.

Provisions for the CMEF are laid down in a set of documents drawn up by the Commission and agreed with Member States which constitute a Handbook including a series of evaluation guidelines and guidance fiches. In particular, they include common indicator lists and descriptive fiches for baseline indicators (36 related to objectives and 23 to context), output indicators (80), result indicators (12) and impact indicators (7) as well as examples of additional indicators. The CMEF is developed continuously since the previous period with the aim of increasing simplification and flexibility to the benefit of Member States.

Given the fact that measures are clearly prescribed and are the same for all the Member states, the common list of indicators is very comprehensive and detailed. It provides indicators ranging from output to impact indicators together with detailed methodological guidance on definitions, methods for measurement, unit of measurement, collection strategy (level, responsible actor, method), sources of information and data availability (by years, territorial levels, registration frequency). Indicators are organized according to Axes and Measures. Since it is acknowledged that common indicators may not catch all the aspects of a programme, there is the possibility to use additional indicators, for which examples are provided by the Handbook. Therefore, there is room for flexibility for the MS to develop specific indicators, but in accordance of the general principle of the CMEF. For example, specific situations when a MS should provide additional indicators are explicitly identified and listed⁷⁵.

⁷³ For Cohesion and Fisheries indicators are dealt with in the article related to the content of Operational Programmes

⁷⁴ This is deemed to be impossible for cohesion policy, where the individual character and wide range of interventions is such that aggregating indicators across programmes was considered as unfeasible.

⁷⁵ When a common baseline indicator does not cover the specific characteristics of the programme area. • When an additional objective or national priority defined in the National Strategy Plan or the programme is not covered by an impact indicator; • When common impact indicators are not detailed or specific enough to reflect the wider benefits of a measure, or where a common impact indicator does not exist for a measure. This is particularly important where measures are highly site-specific, for example in agri-environment. Appropriate measure-specific impact indicators should be developed. • When common result indicators are not detailed or specific enough to reflect the first effects of a measure, or where a common result indicator does

Contrary to cohesion policy, for rural development there is a specific requirement on quantification of impact. The CMEF identifies a short list of common impact indicators⁷⁶, reflecting objectives and priorities established by the European Council and the Strategic Guidelines for rural development. Moreover, it suggests expressing impact indicators i) in absolute amount (to allow cost-effectiveness estimation) and (ii) in relation to direct and indirect beneficiaries.

Another specificity of rural development policy is that indicators are also required at the national strategic level. They should be quantified and include baseline, impact, results and output.

Monitoring Committees composition and role

The composition of the monitoring committee is equally ruled in the three policy domains, with the Member States deciding about its composition. A representative of the MS and of the managing authorities should always be included. Moreover, regulations of rural development and fisheries policies make explicit reference to the partners envisaged according to the partnership principle. Rules of procedures of the monitoring committee should be set according to national institutional, legal and financial frameworks. The participation of the Commission in monitoring committee meetings is always envisaged in the three policy domains; it can be either at the Commission's own initiative or at the request of the monitoring committee.

For DG Agri it is envisaged that member states with regional programmes may establish a national monitoring committee to coordinate the implementation of those programmes.

Regulatory descriptions of responsibilities and tasks of the monitoring committee are similar in the three policy domains; monitoring committees should:

- Consider and approve selection criteria for operations (for DG Agri the monitoring committee has only a consultative role)
- Periodically review the progress made in implementation
- Examine results of implementation and in particular the achievement of targets
- Examine and approve the annual and final reports submitted to the Commission
- Be informed about comments of the Commission on the annual reports
- Propose the managing authorities revisions or examination of the operational programme
- Consider and approve any proposal to amend the content of the Commission decision

Annual examination of programmes

For rural and cohesion policies a regulatory requirement is in place for the annual examination of the implementation. A discussion between the Commission and the Member states takes place on the

not exist for a measure. • When common output indicators are not detailed or specific enough to reflect the activities under a measure (see CMEF Handbook, Annex 1. A – Choice and use of indicators, p. 2)

⁷⁶ They relate to growth, jobs, productivity, biodiversity, high nature value areas, water and climate change. An additional guidance note is available on the application of the High Nature Value Impact Indicator.

basis of annual reporting concerning the state of implementation and the management and control system in place. For fisheries policy such an arrangement is not envisaged.

R3 - Evaluation

In the legal base for evaluation, the distinction is made between general and specific provisions regarding different typologies of evaluation (ex-ante, on-going, mid-term and ex-post). The present issue is closely connected with monitoring and the use of indicators, which are dealt with in fiche R2 and not specifically addressed here.

General provisions

The general provisions on evaluation of structural interventions are quite similar in the three policy fields considered, with the following basic characteristics:

- Evaluation should be carried out before, during and after the implementation of the programme;
- It is financed under the technical assistance budget;
- It is carried out by an internal or external body which is functionally independent from the managing authority;
- The responsibility is shared between the MS and the Commission (with different roles depending on different kinds of evaluations, see below);
- the Commission provides guidance on quality standards and evaluation methodologies;
- Member States are required to provide the human and financial resources necessary for carrying out the evaluations.

Some minor differences are the following:

- cohesion policy makes a distinction between the strategic (examination of the evolution of a programme or group of programmes in relation to Community and national priorities) and operational nature of evaluations. This is relevant especially as far as on-going evaluations are concerned (see below);
- Evaluation criteria are rather different, with only effectiveness being mentioned in all the three regulations. As already noted in the case of the monitoring arrangements, rural development policy includes a regulatory obligation to assess the impact of the programmes. This applies also to fisheries policy, while no such explicit requirement is made in the cohesion policy framework.

Typologies of evaluation

Three main moments for carrying out evaluations are envisaged: ex-ante, on-going and ex post. Some minor specificities of the three policy fields considered are listed below:

- While the responsibility is in general shared between MS and the Commission for ex-ante evaluation, the main responsibility belongs to the MS (the ex-ante evaluation is expected to improve the programming quality), the responsibility is shared between the MS and the Commission for on-going/interim evaluation while the Commission is responsible for the ex-post evaluation. Rural development policy is an exception since in that case MS are also responsible for the ex-post evaluation of rural development programmes with the Commission being responsible for summaries of such ex-post evaluations;

- For cohesion policy in the Convergence regions, a single ex-ante evaluation covering more than one operational programme can be carried out in justified cases. Regions in the Regional competitiveness and employment objective can choose between carrying out an ex-ante evaluation covering all the operational programmes or an evaluation for each Fund/priority/OP.
- In addition to ex-ante, on-going and ex-post evaluation, for cohesion policy the Commission has the possibility to carry out strategic evaluations and, in partnership with the Member State, evaluations linked to the monitoring of operational programmes in case of significant adjustments required as compared to what originally planned.
- A specific requirement is in place in the Implementation Regulation for fisheries policy, according to which the payment deadline may be interrupted by the Commission in case a MS fails to forward the interim evaluation by 30 June 2011 at the latest. The same arrangement is in place for the rural development policy where the procedure for the temporary suspension referred to in Art. 27(3) of Reg. 1290/2005 may be applied until the reception of the due evaluation reports (mid-terms and ex-post).
- For cohesion policy there is the possibility to carry out an ex-ante evaluation of the NSRF
- Specific provisions are in place for cohesion policy for the ex-ante evaluation of major projects, for which cost benefit analysis is mandatory.

For evaluations to be carried out during the implementation phase of the programmes the systems in place are quite different. Cohesion Policy opted for a demand-driven approach to ongoing evaluation (as opposed to a mid-term as in the previous period) which is carried out 'when necessary'. Two specific cases are identified in which on-going evaluation is of particular importance: in case monitoring reveals a significant departure from the goals initially set and when programme revisions are proposed. Working documents provide indications on how to manage the on-going evaluation activities together with an outline for evaluation plans, quality standard reference and background information. A similar working document has been prepared to guide the process of ex-ante evaluation.

As for the rural development policy, a different framework is in place, with a system of on-going evaluation to be established by the MS including all the evaluation activities performed during the life of the programme (ex-ante, mid-term and ex-post). The evaluation system of DG Agri is supported by the Common Monitoring and Evaluation Framework (CMEF) which includes specific guidelines and reference documents. The starting point of all the evaluation activities is the ex-ante evaluation, when the basis of effective monitoring and evaluations are set, in particular by ensuring that explicit quantified objectives and appropriate indicators (with a baseline and target values) are in place. Indications on Strategic Environmental Assessment are also provided.

In this framework, on-going evaluation activities should be carried out and reported each year to the Monitoring Committee (and a summary of these activities should be included into the Annual Reports). Evaluation in the rural development policy covers, as mentioned above, ex-ante, mid-term and ex-post evaluations, but also other evaluation activities, including the interaction between evaluation activities, the compilation and refinement of indicators, and data collection, as well as

ensuring adequate capacity building. Evaluation therefore consists of three main elements which are closely interlinked and form an integrated approach to optimizing evaluation to help improve programme implementation: continuous activities for evaluation at programme level with annual reporting on those activities (in 2010 and 2015 the reports include mid-term and ex post evaluations); accompanying thematic studies to be carried out at the initiative of the Commission, examining in closer detail certain measures, axes, geographic zones, or specific aspects of rural development policy wherever and whenever the need for such examination arises; Evaluation Expert Network animated by the Commission which provides a Helpdesk function (for the interpretation of evaluation guidelines), helps with capacity building and provides a platform for methodological exchange.

The main objectives of evaluation are: timely establishment and quantification of baseline indicators and target levels, solid linkages between monitoring and evaluation in terms of data collection/provision, ensuring capacity building, ensuring continuity of evaluation activities, i.e. regular assessment of progress, annual reporting, supporting the establishment of good practices. Ongoing evaluation activity is deemed to be a key aspect preparing the ground for the main evaluation events (mid-term and ex post evaluations) and ensuring continuity in programme development across different programming periods.

The CMEF Guidelines for Evaluation provide operational recommendations on specific tasks for the setting up of the evaluation system, such as the establishment of the Terms of Reference or the preparation of evaluation questions and indicators. It also provides an indicative outline of an annual progress report on ongoing evaluation activities and of evaluation reports, as well as a list of evaluation questions by axis and measures, and a set of horizontal evaluation questions. The system nevertheless allows some flexibility and it is suggested to have programme-specific evaluation questions and indicators to reflect the specificities of the programmes.

In the fisheries policy framework, regulatory provisions set up a typical framework of ex-ante, interim and ex-post evaluation. In addition, a specific guidance note on ex-ante evaluation and evaluation indicators is currently being elaborated together with the Member States.⁷⁷

Characteristics of the evaluation procedures in the three structural policies

	Cohesion	Rural Development	Fisheries
Evaluation criteria	Quality, effectiveness and consistency	Quality, efficiency and effectiveness. Impact as regards strategic guidelines of the Community	Quality and effectiveness. Shall also appraise impact with respect to the guiding principles
Guidance role of the Commission	Provision of indicative guidance on evaluation methods, including quality standards	Organization of measures at its own initiative to provide exchanges of best practice and information for evaluators, experts in the MS and Monitoring Committee members.	Organization of measures at its own initiative to provide training, exchanges of best practice and information for evaluators, experts in the MS and Monitoring Committee members

⁷⁷ See Art. 47(5) of Reg. 1198/2006.

Nature of ongoing/mid-term	On demand/thematic, operational and strategic	On going evaluation system with annual progress reports plus mid-term and ex-post evaluations	Interim evaluation
Responsibility for on-going evaluation	MS	Initiative of the MA in cooperation with the Commission. MS is responsible for the on-going evaluation system.	Responsibility of MS, initiative of the MA and in consultation with the Commission
Responsibility for ex-post evaluation	Responsibility of the Commission, in close cooperation with the MS and MA	Initiative of the MA with the Commission, the Commission is responsible for the summary of the ex-post evaluations	Initiative and responsibility of the Commission

R4 - Organisation of IT systems for transmission of data between MS and Commission and within MS

The exchange of data via computerised system is a key requirement for the shared management of the Structural Funds, as well as of the EAFRD and the EFF.

All exchanges of data concerning financial transactions between the Commission and the authorities and bodies designated by the Member States are made by electronic means in accordance with the implementing rules adopted by the Commission⁷⁸. Regulations concerning cohesion and fisheries policies specify that a computer system should be established, for monitoring purposes, and as a tool for the exchange of all data relating to operational programmes⁷⁹.

The SFC2007 computer system

In accordance with the respective regulations,⁸⁰ a new computer system - SFC2007 - has been set up by the Commission with the aim of facilitating the transmission of information between the Commission and Member States. Jointly established by the four general directorates involved in fund management (DG Regio, DG Agri, DG Employment and DG Mare), this system has been adapted to the specificities of the different regulations regarding the content and the transmission of the information.

As described in the European Commission information letter concerning SFC 2007⁸¹, this system has two interfaces. First, a standard Web-Application providing screen and menu-based interface is accessible via internet, for which no additional development effort is needed on the part of the Member States. Second, an interface is available through Web-Services that enables the automatic transfer of data directly from the system of the local administration. This type of interface requires the adaptation of the Member States local system(s).

For both cohesion and fisheries policies, a description of the procedure agreed between the Commission and the Member States for the computerised exchange of data is to be included in the operational programmes. Assurance about management, monitoring and evaluation requirements should also be given⁸². A guidance note from DG Regio and DG Empl further stresses that OP should also include information on the internal circuit between the "central trusted third party" for confirmation and update of SFC 2007 access rights requests and each individual requesting up-to-date

⁷⁸ EC Reg. 1083/2006 Art 74; EC Reg. 1083/2006 - Art 66.3; EC Reg. 883/2006 Art 18; EC Reg. 1198/2006 Art 62.4; EC Reg. 1198/2006 Art 66.4.

⁷⁹ EC Reg. 498/2007 Art 64; EC Reg. 1828/2006 Art 31 and 39.

⁸⁰ EC Reg. 883/2006 Art 18.1; EC Reg. 1828/2006 Art 39; EC Reg. 498/2007 Art 64. These regulations explicitly state that it is up to the Commission to establish such computer system.

⁸¹ European Commission, SFC2007 - Information letter.

⁸² For example, EC Reg. 1080/2006 Art 12 - Each operational programme under the "European territorial cooperation" objective shall contain the following information: (...) (f) a description of the procedures agreed between the Commission and Member States for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by Regulation (EC) No 1083/2006.

EC Reg. 1083/2006 Art 37. 1 Operational programmes relating to the Convergence and Regional competitiveness and employment objectives shall contain: (...) a description of the procedures agreed between the Commission and the Member State for the exchange of computerised data to meet the payment, monitoring and evaluation requirements laid down by this Regulation; (..)

access to SFC 2007⁸³. As for the fisheries policy, a DG Mare guidance note⁸⁴ highlights that the arrangements to be agreed between the Commission and the Member State for the computerised exchange of data should be presented in the OP, by specifying the direct use of SFC 2007 or the use of an interface with the local IT system and the procedures being implemented to provide assurance on the reliability of the accounting, monitoring and financial reporting systems in computerised form.

While communications between the Commission and the Member States relating to the approval, financial management, monitoring and evaluation of rural development, fisheries, as well as cohesion policies go through the SFC2007 system, the internal procedures of DG Agri, DG Mare and DG Empl / Regio are computerised through their own internal systems, which are respectively RDIS system (Rural Development Information System)⁸⁵, IFONT and WFS⁸⁶.

Content of the computer system

The content of the computer system for data exchange is laid down at Community level. According to the regulations concerned⁸⁷, the computer system should contain information of common interest to the Commission and Member States, as well as the necessary data for financial transactions. Cohesion and fisheries policies are similar in this regard, by providing a quite similar list of information and documents that Member States should submit via the computer system, while less detailed indications on the type of information and documents to be submitted can be found in the regulations concerning the rural development policy.

For cohesion and fisheries policies, a further indication is laid down at regulatory level⁸⁸ concerning documents dealing with the partial closure. As highlighted also in the guidance notes concerned, the statement of expenditure concerning partial closure should be registered in the computer system for data exchange⁸⁹. The question whether it is necessary for the MS to submit the monitoring committee

⁸³ European Commission, DG Regio and DG Employment, Programming period 2007-2013: Aide-memoire for desk officers, November 2006.

⁸⁴ European Commission, DG Mare, Guidance for OP negotiation: Assessment of operational programmes and drafting of negotiating positions, Brussels 2006.

⁸⁵ This is a financial and workflow system that replaces CAP-IDIM system of the previous programming period. The information related to the annual accounts of paying agencies, referred to in Art. 8(1)(c)(iii) of Council Regulation 1290/2005, are sent for both EAGF and EAFRD through this system. The existence of this separate system is due to some differences that characterise rural development policy. The treatment by DG Agri of declarations of expenditure, and payments to the Member States follow rules that are quite different from the other funds. This is mainly due to the existence of predefined rural development measures and axes, to the financial management on the ground according to the paying agencies accounting rules, and to the annual clearance of accounts procedure. European Commission, SFC2007 - Information letter.

⁸⁶ It is an integrated system computerising the internal financial circuits of DG regional policy. European Commission, DG regional policy, Annual activity Report for the year 2004.

⁸⁷ EC Reg. 498/2007 Art 65; EC Reg. 1828/2006 Art 40; EC Reg. 883/2006 Art 18

⁸⁸ EC Reg. 498/2007 Art 65.2 (h); EC Reg. 1828/2006 Art 40.2 (k)

⁸⁹ Given that the statement of expenditure for partial closure is not accompanied by a certification of expenditure, expenditure covered by this statement must have already been certified by the certifying authority through a previous certificate and statement of expenditure and application for payment in accordance with Annex IX to Regulation (EC) No 498/2007. In accordance with Article 65 (2)(g) and (h) of Regulation (EC) No 498/2007, these documents shall be registered in the computer system for data exchange (SFC 2007). European Commission, DG Regio: Guidance note on Partial Closure (COCOF Document adapted to EFF Regulation) (under Article 85 of Regulation (EC) No 1198/2006)

European Commission, DG Regio, Guidance Note on Partial Closure (Under Article 88 Of Regulation (EC) No 1083/2006), Brussels 2009.

documents to the Commission via SFC 2007, is specifically addressed by DG Mare in a note⁹⁰, which stresses that the role of SFC 2007 is to bring together all the relevant documents of a programme and to maintain track record of the work carried out by the Monitoring Committee. To this end, Member States are encouraged to also submit the final version of the documents via SFC 2007.

Consequences for member states

As a consequence of the adoption of a computer system for the exchange of data, in the field of cohesion and fisheries policies, Member States are asked to submit a paper version only in case of force majeure, and in particular in case of a malfunction of the common computerised system or a lack of a lasting connection⁹¹, by using the forms set out in the annexes of the appropriate regulations. Member State must always introduce the data electronically without delay, as soon as the cause of force majeure ceases. In the case of certain documents that have to be signed with a handwritten signature, this procedure is replaced by a form of electronic signature (e-Signature)⁹².

This is a major difference with the previous programming period, where Member States had to submit paper versions of the documents even when data were provided electronically.

As far as rural development is concerned, no information is available for the procedure to be followed in the case of malfunction of the computer system. With regards the signature, the regulations concerned only states that where a document or procedure provided or the detailed rules for its application require the signature of an authorised person or the approval of a person, the computer systems set up for the communication of these documents must make it possible to identify each person unambiguously and provide reasonable assurance that the contents of the documents, including the stages of the procedure, cannot be altered, in accordance with Community legislation⁹³.

⁹⁰ European Commission, DG Mare - Note to the file - Subject: Submission of Monitoring Committee documents via SFC 2007, Brussels 2008.

⁹¹ EC Reg. 1198/2006 Art 75; EC Reg. 498/2007 Art 67.3

⁹² EC Reg. 498/2007 Art 66; EC Reg. 1828/2006 Art 41.

⁹³ EC Reg. 883/2006 Art 18.6.

Financial management

F1 – Ex-ante assessment of national management and control systems

Rural development policy framework: accreditation of paying agencies

Before reimbursement by the Commission to the Member States can be made, the MS' management and control system in connection with EARDF expenditure is assessed ex-ante. The two building blocks of this assessment procedure are: the accreditation of paying agencies (see below) and the establishment of a detailed system for ex ante controls and dissuasive sanctions (see F2).

The rural development policy framework foresees an ex-ante accreditation of paying agencies by Member States at ministerial level on the basis of a prior accreditation audit carried out by an independent audit body (certification body) before payments can be made⁹⁴ (see Box 1 below).

Box 1. Procedure for the accreditation of paying agencies in the rural development framework.

In the designation of the authorities responsible for the management and control of EAGF and EAFRD expenditure, a special procedure of accreditation should be followed by the Member States with regard to the paying agencies.

According to the art 74 of the EC Regulation 1698/2005, Member States have the responsibility to assign, for each rural development programme, an accredited paying agency. In order to be accredited, each paying agency should fulfil a set of criteria laid down at Community level. According to Art 1 of the EC reg. 885/2006, these accreditation criteria concern the four areas of the paying agencies' internal control system: internal environment, control activities, information and communication, monitoring.

The examination of the compliance of the paying agencies with the accreditation criteria is carried out by an audit body which is independent from the paying agency to be accredited (certification body). On the basis of this examination, the authority designed at ministerial level (the competent authority) for each paying agency by the Member States, decides on the accreditation of the paying agency.

After the paying agency is accredited, it is up to the Commission to inform the Committee on the Agricultural Funds about the paying agencies accredited in each Member State.

During its operations, a paying agency is subject to the constant supervisions of the competent authority, which is in charge of informing the Commission, every three years, on the constant compliance of the paying agencies with the accreditation criteria. If one or more of the accreditation criteria are no longer respected or serious problems affect the ability of the paying agency to fulfil its tasks, the competent authority must put the paying agency concerned under probation and draw up a plan to remedy the deficiencies found within a timeframe which should not exceed 12 months. Where the accreditation is withdrawn, the competent authority must proceed, without delay, to accredit another paying agency in order to ensure that payments to beneficiaries are not interrupted. Where the competent authority has not complied with its obligation to draw up a remedial plan or maintains the accreditation of the paying agency although the problems have not been remedied within the set timeframe, the regulation envisages the duty for the Commission to pursue any remaining deficiencies with the

⁹⁴ However, as is the case in the cohesion / fisheries policies frameworks, an advance payment is done when rural development programmes are adopted.

conformity clearance procedure, by imposing financial corrections on the Member State concerned in order to protect the Community's financial interests.

The procedure of compliance assessment in cohesion and fisheries policies frameworks

The assessment procedure of MS' management and control system at work in the cohesion and fisheries policies framework differs significantly from the system in use in the rural development policy framework. The introduction of this ex-ante arrangement is a significant new development characterising the 2007-13 programming period.

After the approval of cohesion and fisheries policies' operational programmes, a first advance payment is made. In parallel, a compliance assessment procedure is carried out in order to ensure the satisfactory set-up of control systems before any expenditure is reimbursed. Within 12 months of the programme approval, a national public or private audit body or the audit authority has to submit to the Commission a description of the systems⁹⁵ (covering the organisation and procedures of the managing and certifying authorities, intermediate bodies, and the audit authorities) and a report setting up an assessment of the compliance⁹⁶ of management and control systems with regulatory requirements⁹⁷. The Commission reviews the compliance assessment report and, unless reservations or observations are expressed, the report is deemed to be accepted within three months of the date of receipt. The first interim payment can then be made. On the contrary, in the case of reservations, only after the necessary corrective measures have been taken and the Commission has received sufficient assurance that the control system fully meets the regulatory requirements, the interim payments start.

A guidance note from DG Mare⁹⁸ further clarifies that the analysis of the compliance assessment documents carried out by the Commission consists of three stages:

1. Formal verification ("admissibility check") aimed at verifying if the systems descriptions and opinion on compliance assessment have been prepared in line with the model provided at community level.
2. In-depth verification ("acceptance check") aimed at verifying if the systems set up by the Member States comply with Articles 57-61 of Reg. 1198/2006.
3. Sending a formal letter to the Member States concerned setting out the results of the acceptance check.

The deadlines and a detailed description for each of the three stages are also provided.

Together with the compliance assessment, MS have to submit an audit strategy describing the bodies involved in the control system and the methodology to be used. According to Art. 62 of Reg. 1083/2006, when a common system of control applies to several operational programmes, a single audit strategy may be submitted. The Commission guidance note on the Audit Strategy⁹⁹ illustrates

⁹⁵ EC Reg.498/2007, laying down detailed rules for the implementation of Council Regulation (EC) No 1198/2006 on the European fisheries Fund provides a model for the description of management and control systems in the Annex XII.

⁹⁶ Compliance should be assessed with Articles 58-62 (EC Reg. 1083/2006) and 57-61 (EC Reg.1198/2006), respectively for cohesion and fisheries policies.

⁹⁷ EC Reg. 1083/2006 Art 71; EC Reg. 1828/2006 Art 21-24; EC Reg. 1198/2006 Art 71.

⁹⁸ European Commission, DG Mare, Guidance note on Internal procedure.

⁹⁹ COCOF 07/0038/01-EN

that “a common system is considered to exist where the same management and control system supports the activities of several operational programmes”. Only for the European Territorial Cooperation programmes the audit strategies have to be drawn up separately, because they involve different Member States.

F2 – Financial management and control arrangements during the implementation stage

Authorities in charge of the management and control systems

For each rural development programme, Member States should designate three authorities: a managing authority (MA), an accredited paying agency (PA) and a certification body or “independent audit body”.¹⁰⁰ However, unlike in the DG Empl / Regio and DG Mare policies, the managing authority is exclusively responsible for the efficient, effective and correct management and implementation of the programme (Reg. 1698/2005, Art. 75), while the paying agency is the body which has to carry out the first level financial controls. The Member State designates one or more paying agencies among the national departments or bodies.¹⁰¹ As to the certification body, it is an external independent body with audit functions – and as such it can be compared to cohesion / fisheries policies’ audit authority (see below and Fiche F3). It can be not only a public but also a private legal entity, whose function is to certify the accuracy, truthfulness and completeness of the accounts of the paying agency and the functioning of the paying agency’s internal control framework.¹⁰²

The control systems in operation in the cohesion and fisheries policies are the same.¹⁰³ They are structured around three main actors: the managing authority (MA), the certifying authority (CA) and the audit authority (AA). The mutual relations between the authorities are laid down by the Member States. For each operational programme, the Member States designate a single managing authority, chosen among the national, regional or local public authorities. Its responsibilities are wide and concern the management of the programme’s operations, including implementation, evaluation, monitoring and also – unlike MA in the rural development framework – financial controls.¹⁰⁴ Like the MA, the certifying authority is designated by the Member States for each operational programme and may delegate part or all of its tasks to intermediate bodies, maintaining however the formal responsibility. It can be identified among national, regional or local public authorities or other non private bodies. As to the audit authority, it is appointed by the Member States for each operational programme. It can be a national, regional or local public authority or body – functional independence from the MA and the CA must be guaranteed (Art. 59 Reg. 1083/2009).

¹⁰⁰ Art. 74 Reg. 1698/2005

¹⁰¹ Where more than one paying agency is accredited, the Member States shall choose a coordinating body, with the task of collection of the information to be made available to the Commission and promotion of the application of the Community rules in a harmonised way. Its details have to be communicated to the Commission (Reg. 1290/2005, Art. 6 (3)). The number of paying agencies has to be restricted to the minimum necessary to ensure sound administrative and accounting conditions. Like the managing authority of the cohesion or fisheries development programmes, the paying agency may designate other bodies to whom delegate some tasks, with the exception of the payment of Community aid.

¹⁰² If the Member State has more than one paying agency, it is further required to produce an annual synthesis report of all certificates from the certification bodies. See Art.7 Reg. 1290/2005.

¹⁰³ The general principles applying to the control system of the cohesion and fisheries policies are listed in Regulation 1083/2006 (Art. 58) and Reg. 1198/2006 (Art. 57), respectively. They are: Principle of definition, separation and independence of functions; Correctness and regularity of expenditure; Reliable accounting; System of reporting and monitoring where the responsible body entrusts the execution of tasks to another body; Adequate audit trail; Reporting and monitoring of non compliances.

¹⁰⁴ Member States may designate one or more intermediate bodies to carry out some or all of the tasks of the managing authority, but the responsibility remains under the MA.

In both frameworks, the Commission performs a supervisory role over the national systems (see F3).

Statement / declaration of expenditure related to payments¹⁰⁵

In order to get interim and final payments of the operations from the Commission, Member States must provide statements (cohesion and fisheries policies) and a declaration (rural development policy) of expenditures.¹⁰⁶ The main differences relate to:

- For rural development policy, declarations of expenditure must be provided four times per year whereas cohesion / fisheries policies' statement of expenditure are submitted several times a year as certifying authorities see fit.
- In the case of rural development policy, declarations of expenditure include payments made by MS to beneficiaries while, statements of expenditure for cohesion and fisheries' policies include expenditure paid by the beneficiaries.
- Expenditure declarations in rural development policy are broken down to measure level instead of the level of priority as is the case for statements of expenditure in cohesion and fisheries policies.

Additional specific features also characterise statements of expenditure in the cohesion / fisheries policies frameworks, of which some are new in the 2007-13 period.¹⁰⁷

Rural development policy: annual statement of assurance

In the rural development framework, the paying agency has the role of ensuring, before the payments are authorised, that the procedures for allocating funds comply with the Community rules (see F1), and after payments are made, that accurate and extensive accounts are kept on them. The PA is responsible for the accessibility, completeness, validity and legibility of all the documents and for their presentation in the right form and within the time limits set.

During the implementing period, the heads of the paying agencies are required to provide a statement of assurance, together with the accounts on an annual basis. A statement of assurance covers the completeness, accuracy and veracity of the accounts presented,¹⁰⁸ and presents a formal declaration that the system in place provides reasonable assurance on the legality and regularity of the underlying transactions.¹⁰⁹

¹⁰⁵ See also Fiche R1.

¹⁰⁶ Annex X Reg. 1828/2006 and Annex IX Reg. 498/2007 provide templates for the statement / declaration of expenditure in cohesion / fisheries policies and rural development policy, respectively.

¹⁰⁷ For the first time in the period 2007-2013, the statement of expenditure for state aid schemes may include advances of the bodies granting the aid and the expenditure of major projects can be certified as of the date of eligibility of the programme. Also, derogations apply for financial engineering instruments (Art. 78 Reg. 1083/2006).

¹⁰⁸ In case of more than one PA, it is required that an annual synthesis report be produced, which summarises all the statements of assurance.

¹⁰⁹ Art 3 Reg. 885/2006

According to Art. 13 Reg. 883/2006, each paying agency designated for a rural development programme must keep annual accounts enabling all the operations and measures of the programme to be identified. Such accounts include:

- the amount of public expenditure and the amount of the Community contribution paid for each operation;
- the amounts to be recovered from beneficiaries for irregularities or negligence found;
- the amounts recovered, with an indication of the original operation.

Annual accounts refer to the EAFRD accounting year, from 16 October to 15 October and should be sent to the Commission by 1st February of each year. These allow the Member States and the Commission to regularly monitor the financial performance and- according to DG Agri budget delivery discussion document – are expected to be useful in simplifying the closure of multi-annual programmes. The statement of assurance confirms that

- the accounts presented give a true, complete and accurate view of expenditure and receipts for the financial year concerned;
- all debts, advances, guarantees and stocks known have been recorded and all receipts collected relating to the EAFRD properly credited;
- a system providing reasonable assurance on the legality and regularity of the transactions has been put in place.

For all respective policy areas incl. rural development Member States can draw up a national declaration on the management and control of the funds it receives from the EU on a voluntary basis.¹¹⁰

In addition, controls and dissuasive sanctions can be implemented. Controls comprise two procedures: exhaustive ex ante administrative controls of 100% of the aid applications and on-the-spot checks of a sample of pre-payments made by the paying agencies. The latter range from 1% to 100%, depending on the level of risk attributed to the respective transactions.¹¹¹ In case on-the-spot checks reveal a high number of non compliances, additional controls are carried out.

The reporting system allows the quantification of the amounts not paid to beneficiaries as a result of the on-the-spot checks.¹¹² For each aid scheme, an error rate can thus be calculated at the level of beneficiaries.

The independent audit bodies (certification bodies) verify and validate the statistical information reported and the quality of the on-the-spot checks by comparing the control results reported by the paying agencies with the underlying information in the paying agencies' databases. The independent

¹¹⁰ In the three policy frameworks, annual summary are foreseen (art 53 b 3 Reg. 1995/2006 amending Reg. 1605/2002 on Financial regulation) which should pave the way to voluntary declarations on the management and controls. See also a guidance note (COCOF) "Guidance note on the Annual Summary in relation to Structural Actions and the EEF revised 2010 (under Art. 53b(3) of amended Financial Regulation).

¹¹¹ See Art. 37 Reg. 1290/2005, Art. 15, 20, 27, 28 Reg. 1975/2006.

¹¹² In this respect, the IACS - Integrated Administration and Control System which covers an important part of EARDF expenditure plays an important role

audit bodies provide an opinion on the quality of the on-the-spot controls carried out by the paying agencies, as well as on the quality of the procedures in place.

Cohesion and fisheries policies frameworks: certification of expenditure

In the cohesion / fisheries policies frameworks, each statement of expenditure (submitted to the Commission on a continuous basis) is certified by the certifying authority. The process of certification is carried out by the certifying authority, on the basis of the work done by the managing authority (and the audit authority) and on the basis of its own controls.

First level controls: the managing authority

The regulations foresee that MS should put in place a system of first level controls, in order to check that the expenditure declared by the beneficiaries has actually incurred, is regular (Art. 60(b) Reg. 1083/2006), and that the beneficiaries' accounting systems for the transactions relating to the operations are adequate (Art. 60(d) Reg. 1083/2006). Verifications cover the administrative, financial, technical and physical aspects of operations. Contrary to the rural development policy framework, in the system of cohesion / fisheries the MA is the authority which is responsible for first level controls. The MA also needs to ensure an adequate audit trail, to provide the certifying authority with all information necessary for carrying out its tasks (Art. 60(g) Reg. 1083/2006) and to ensure that all the documents on expenditure and audits are kept available also for the Commission (Art. 90 Reg. 1083/2006). Additionally the MA should establish procedures to avoid double-financing of expenditure (Art. 13 Reg. 1828/2006). First level controls consist of administrative (desk based) verifications on documentation, and physical on the spot verifications (which can be performed only for a sample of operations). The difference with the rural development system is that the Commission does not request standardized information on these management controls. The main reporting to the Commission concerns audit work (see F3).

The role of the certifying authority

The first level controls carried out by the managing authority are flanked by the activity of the certifying authority. Certifying authority has the role of examining and assessing the eligibility of expenditure incurred, before declaring expenditure to the Commission. The certifying authority must control that the expenditure declared has been actually paid by the beneficiaries, that all underlying transactions are lawful, and that supporting documents are available and will be available for at least three years after the closure of the operational programme and in case of partial closure for the operations concerned. The certifying authority has to ensure that it took into account available results from audits and that it received adequate information from the managing authorities demonstrating that the expenditure has been properly checked¹¹³.

The main features characterising the certification process are highlighted in a DG Empl / Regio guidance note on the functions of the certifying authority; they concern:

- a. Information adequateness for certification

¹¹³ Art 61 Reg. 1083/2006; Art 60 Reg.1198/2006.

In order to fulfil its obligations, the certifying authority must be provided with adequate information concerning the procedures used by the managing authority (and by intermediate bodies). The information provided should include:

- a description of the control systems, procedures and checklists used;
- the methodology for sampling for the on-the-spot verifications;
- results of the risk analysis;
- data on the administrative and on-the-spot verifications carried out during the last reporting period.

b. Identification of the steps to be followed for certification

Certifying authorities should be able to identify the procedural steps necessary to carry out a reliable and correct assessment of the statements of expenditure in order to certify them.

F3 – Audit and ex-post controls – supervision by the Commission

Rural development policy: the role of the certification bodies (independent audit bodies)

Besides ex-post controls imposed on all aid measures,¹¹⁴ the paying agencies' annual accounts and the functioning of their internal control procedures are verified and certified by the certification bodies. Both types of controls are carried out in accordance with an annual audit plan established on the basis of a pre-determined audit strategy.

The function of the certification body (or independent audit body) is to certify the “accuracy, truthfulness and completeness of the accounts of the paying agency”¹¹⁵ and to assess whether the internal control procedures of the latter have operated satisfactorily. This is done through an annual ex-post exercise (which is not related to the quarterly reimbursement claims described in F2).

The certification is based on an examination of procedures and a sample of transactions. This examination covers the paying agency's administrative structure only as regards the question whether that structure is capable of ensuring that compliance with Community rules is checked before payments are made.¹¹⁶ Different types of “opinions” may be expressed:

- unqualified opinion, clearly stating that the accounts are true, complete and accurate and that the internal control procedures have operated satisfactorily;
- unqualified opinion with emphasis on matters, which affect the financial statements but does not change the auditor's opinion;
- qualified opinion, when a limitation on the scope of the auditor's work exists, or there is a disagreement with management regarding the acceptability of the accounting policies selected, the method of their application or the adequacy of financial statement disclosures. The former situation can lead to a qualified opinion or a disclaimer, the latter to a qualified opinion or an adverse opinion.

It is worth noting that the certification examines the completeness, accuracy and veracity of the accounts, but not directly the legality and regularity of the underlying transactions, though it also covers elements of the latter.

The results of the certification are presented in a “certificate” which should follow a pre-determined structure.¹¹⁷ The certificates comprise a) an overview of the situation of all accredited PA, and b) a description of the possible implications of the individual certificates at the level of the Member States. All the certificates have to be included in an annual synthesis report where the certification bodies are required to provide an opinion on the annual statement of assurance of the heads of the PA and on the quality of on-the-spot verifications, against a scale from 1 to 5.¹¹⁸

¹¹⁴ Art 30 Reg. 1975/2006

¹¹⁵ Art.7 Reg.1290/2005

¹¹⁶ Although one certificate may be submitted covering the two Funds of the Common Agricultural Policy (EAGF and EAFRD), it must nevertheless contain clearly distinguishable audit opinions for each Fund.

¹¹⁷ See COCOF 08/0021/02-EN and DG Agri guidelines No 6 “The form, scope and contents of the certificate of the certification”

¹¹⁸ For the financial year 2008, the certification bodies indicated 73 out of 81 accredited paying agencies as having operated adequately, while for the remaining 9 paying agencies, serious weaknesses have been detected. See Annual Activity Report 2008.

Once the certification from the competent body has been obtained, the Member States can send to the Commission the following dossier regarding the accounts of paying agencies as part of the Member States' reporting obligations:

- the annual accounts;
- the statement of assurance;
- the certificate and report drawn up by the certification body;
- complete records of all the accounting information.

Audit in the cohesion and fisheries policies frameworks

The audit for the Structural Funds and EFF is carried out by an audit authority (AA) responsible for analyzing the reliability of the documents and accounts provided by the managing authority and certified by the certifying authority. In general, the AA is in charge of verifying the effective functioning of the management and control system; in particular, it verifies whether the operations are eligible for European funding, whether the expenditure declared corresponds to the accounting records, complies with Community and national rules and whether the public contribution has been paid to the beneficiaries (Art. 16 Reg.1828/2006). Where anomalies or systemic problems are detected, the AA carries out further examination, including additional audits where necessary, in order to establish the scale of the problems.

The AA produces its results on the basis of the documents held by the beneficiaries, the results of the desk and on-the-spot verifications implemented at the previous levels of financial control by the MA and the CA, and also on the basis of its own audits of both the management and control system and the operations. It adopts a sampling methodology which is generally based on a random statistical sampling method, but some additional and complementary audits can be carried out with a different method (on the basis of risk). The AA regularly reviews the coverage provided by the random sample, in order to ensure that different types of operations, beneficiaries, or priority axes are covered.

Based on documentation and records held by the MA, the CA and the beneficiaries, the AA has to produce and deliver to the Commission the following main documents:

- the audit strategy, describing the bodies involved in the control system and the methodology to be used (see fiche F1);
- the annual control report, where a synthesis of the audit findings of the previous 12 months is presented: it reports also any shortcomings found in the system and the recommendations made in case of detected irregularities;
- an audit opinion on the functioning of management and control systems;¹¹⁹
- a closure declaration at the end of the programming period(see below).

¹¹⁹ The report and opinion can cover more than one operational programme where a common management and control system applies. See Art.62 Reg. 1083/2006; Art 61 Reg. 1198/2006.

The annual control report and the annual audit opinion that the audit authorities are required to submit form the basis for the assurance of the Commission. In addition, Member States can provide an annual declaration in relation to the EU funds received on voluntary basis (together with the report of the national audit office which has audited the declaration).

Supervision by the Commission

In both cohesion / fisheries and rural development policies frameworks, the Commission has a supervisory role consisting of on-the-spot audits to verify the effective functioning of the management and control systems. According to the respective regulations¹²⁰, officials or authorised representatives of the Member State may take part in such audits.

In the case of the cohesion policy framework, the role of the Commission, as stated in Art.72 Reg. 1083/2006 is to supervise the proper set-up and implementation of the control system, by:

- reviewing the reports submitted by the MS, primarily those submitted by the audit authority;
- eventually carrying out its own on-the-spot audits, taking into account the audits performed by the audit authority.

In the framework of the rural development policy, the Commission is required to verify that Member States have made proper use of the funds they have received through a procedure known as the clearance of accounts. This procedure consists of both an annual financial clearance and a multi-annual conformity clearance. While the former is specific to the rural development policy, the latter is common to cohesion / fisheries and rural development policies.

Annual financial clearance in the rural development policy framework

After paying agencies have submitted their declaration, it is up to the Commission to take a clearance decision covering the completeness, accuracy and veracity of the annual accounts submitted (Art 30 Reg. 1290/2005). The decision is based on the documents that paying agencies are asked to submit annually (by 1 February at the latest of the year following the end of the financial year which it concern) in accordance with Article 8 of the Regulation. In addition, on their own initiative, Member States can provide the Commission with further information concerning the clearance of accounts within a time period determined by the Commission. The clearance decision is adopted by the Commission under the advisory procedure laid down in the Art 3 and 7 of Decision 1999/468/EC. It determines the amounts of expenditure incurred in each Member State during the financial year in question and recognised as being chargeable to the EAFRD¹²¹ (Reg. 885/2006 Art 10).

The form and the content of the accounting information to be submitted by the paying agencies are established at community level (Art. 6 – 7 Reg. 885/2006). The regulation also states that the way this information is to be forwarded to the Commission should be established in accordance with the management procedure laid down in the Articles 4 and 7 of the of Decision 1999/468/EC¹²².

¹²⁰ Art 72 Reg. 1083/2006; Art 72 Reg. 1198/2006.

¹²¹ and the EAGF.

¹²² Art 8 Reg 885/2006 and Art 41(2) Reg 1290/2005. In its decision, the Commission is assisted by a Management Committee, composed of the representatives of the Member States and chaired by the representative of the Commission. This decision

Commission proposals should be communicated to the Member State by 31 March following the end of the financial year at the latest and the formal financial clearance decision adopted by 30 April of that year.

The annual financial clearance is a new arrangement in the 2007-13 programming period. It has no formal equivalent in the cohesion / fisheries policy frameworks (even if in any case, the Commission gets an audit opinion from the AA every year which covers the soundness of management and control systems and the information on the legality and regularity of expenditure).

Multi-annual conformity clearance in the rural development and cohesion policies frameworks

While the accounting (financial) clearance is an annual exercise, the conformity (or compliance) clearance (or audit) is an ex post exercise that can cover expenditure incurred in more than one budget year. It concerns the legality and regularity of the underlying transactions and provides the basis on which financial corrections are imposed on MS. As stated by the Regulation concerned (Art 31 Reg. 1290/2005), if the Commission finds that expenditure has incurred in a way that has infringed Community rules, it shall take a decision of conformity clearance by which it excludes this expenditure from Community financing (specific guidelines on the conformity clearance procedure are laid down at regulatory level.¹²³). The resulting financial corrections are expected to lead to an improvement in the Member States' management and control systems and thus to prevent detect and recover irregular payments to beneficiaries, however they are not per se a mechanism to recover irregular payments from beneficiaries which remain the sole responsibility of Member States. Comparable procedures are implemented in the cohesion / fisheries policies frameworks.

Correction of non-compliance

Where irregularities/non-compliances are found in the functioning of the Member States management and control systems, corrective measures are put in place to remedy them.

In general, cohesion and fisheries policies are similar in this regard, while some differences characterise rural development policy.

Three measures are foreseen within the cohesion and fisheries policies frameworks which can be corrective, disciplinary or preventive:

should be adopted in accordance with the advisory procedure referred to in Article 41(3). Following the receipt of the Commission decision about the corrective measures needed, the Member State concerned must reply within two months and the Commission may modify its position in consequence. After expiry of the period for reply, the two parties must attempt to reach agreement on the action to be taken, through a bilateral meeting. Within two months from the date of the reception of the minutes of the bilateral meeting, the Member State must communicate any information requested during that meeting or any other information which it considers useful for the ongoing examination. After the expiry of the two months, the Commission formally communicates its conclusions to the Member State on the basis of the information received in the framework of the conformity clearance procedure. If agreement is not reached, the Member State can, within four months, request to open a conciliation procedure aimed at reconciling each party's position (Art 31 (3)). The tasks, composition of the Conciliation body, as well as the conciliation procedure are laid down at community level (Art. 12-16 Reg. 885/2006).

¹²³ Art 6 -11 Reg. 855/2006

- Interruption of payments:¹²⁴ The authorising officer by delegation has the power to interrupt an interim payment for up to 6 months where there is evidence of serious deficiency in the functioning of management and control systems or of serious uncorrected irregularities.
- Suspension of payments:¹²⁵ the Commission can decide to suspend interim payments to a programme for an indefinite period where it concludes that the management and control system contains serious deficiencies.
- Financial corrections:¹²⁶ the Commission can decide to apply financial corrections (including flat rate and extrapolated corrections) where the Member State has failed to take action to remedy systematic irregularities or failed to apply necessary financial corrections. Such corrections by the Commission may result in a loss of all or part of the Community funding to an operational programme.

As far as the rural development policy is concerned, the system of corrective measures essentially relies on ex-post financial corrections imposed on Member States through the conformity clearance procedures, whereby the Commission excludes expenditure from Community financing which has not been executed in conformity with Community rules. Financial corrections are explicitly foreseen in Art. 31 Reg. 1290/2005. Moreover, there is the possibility of suspending or reducing intermediate reimbursements to Member States according to Art. 27 and 27(a) of Reg. 1290/2005.¹²⁷

In addition, guidance from DG Agri clarifies that a mechanism is envisaged under which 50% of any undue payments which Member States have not recovered from the beneficiaries within fixed time limits will be charged to their respective national budgets ("50/50 rule"). Even after the application of that 50/50 rule, Member States are obliged to pursue their recovery procedures and, if they fail to do so with the required diligence, the Commission may eventually decide to charge the entire outstanding amounts to the Member States concerned.

Time limits for the Commission audit activities

In the field of rural development policy, the multi-annual conformity clearance is performed within 24 months of the clearance of accounts for a certain year which corresponds to the period during which Commission audits can take place (Art 31 Reg. 1290/2005). In the case of cohesion policy, the Commission (and the Court of Auditors) can audit expenditure until 3 years after the closure of the programme (Art 90 1(a) Reg. 1038/2006). In the period 2007-2013, audits can take place up to 14 years after expenditure occurs at beneficiary level. In principle, the programmes could be closed in 2017, but if closure takes longer, audits by the Commission can be performed over the course 15 or more years.¹²⁸

¹²⁴ Art 91 1083/2006; Art 88 Reg. 1198/2006

¹²⁵ Art 92 Reg. 1083/2006; Art 89 Reg. 1198/2006

¹²⁶ Art 98-101 Reg. 1083/2006; Art 96 – 99 Reg. 1198/2006

¹²⁷ Art 17 and 27 Reg.1290/2005.

¹²⁸ Art 62 1(e) Reg. 1083/2006 states that audit authority should declare the validity of expenditure by the 31 March 2017. This means that audit can be done over a period of 11 years (2007-2017) since expenditure + 3 years after the closure during which managing authorities must keep the necessary document available to the Commission and the audit authorities. The 15 years period refers to the case in which the programme is closed in 2018 instead of 2017.

Closure

Programme closure is a dedicated final stage in the assurance process at MS level in the cohesion / fisheries policies frameworks which occurs at the end of the programming period. Final reporting to the Commission takes place through a final statement of expenditure and a final audit report / opinion. The audit authority provides a closure declaration on the legality and regularity of the expenditure covered by the final statement of expenditure.¹²⁹ The Commission carries out final checks including ex post audits on a sample of programmes / projects.

Closing the entire programme at the end of the programming period entails a resource-intensive process with the risk of omitting information dispersed as the years pass by. The possibility of a partial closure of the programme has been introduced in the current programming period, but it is not mandatory.¹³⁰

In the rural development policy framework, the financial clearance that takes place annually contributes to the final clearance at the end of the programming period. For this reason no specific procedure for final closure is foreseen.

¹²⁹ Art 62 Reg. 1083/2006; Art. 61 Reg. 1198/2006.

¹³⁰ DG Regio, Guidance note on partial closure (under article 88 of regulation (ec) no 1083/2006), Brussels 2009; EC, DG Regio, Guidance note on Partial Closure (COCOF Document adapted to EFF Regulation) (under Article 85 of Regulation (EC) No 1198/2006), Brussels 2009.