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THE EUROPEAN UNION**

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ADD 4 REV 2**

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**ADDENDUM 4 to NOTE**

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from : Presidency  
to : Permanent Representatives Committee (part 2)/Council

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Subject: Cohesion Policy legislative package  
- Presidency compromise on Financial Issues not in the MFF (non-transferability of resources, additionality and modulation of co-financing rates)

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Delegations will find attached a compromise text on the parts of the proposal for the Common Provisions Regulation on Financial Issues not in the MFF.

The modifications highlighted in bold are those in comparison to the amended proposal presented by the Commission on 11 September 2012.

## Common Provisions Regulation

### CHAPTER II

#### Financial frame work

##### *Article 85*

#### **Non-transferability of resources**

1. The total appropriations allocated to each Member State in respect of less developed regions, [transition regions]<sup>1</sup> and more developed regions shall not be transferable between each of those categories of regions.
  
2. By way of derogation from paragraph 1, the Commission may accept, in duly justified circumstances which are linked to the implementation of one or more thematic objectives, a proposal by a Member State in its first submission of the Partnership **Agreement or, in duly justified circumstances, in a major revision of the Partnership Agreement** to transfer up to **3%** of the total appropriation for a category of regions to other categories of regions.

##### *Article 86*

#### ***Additionality***

1. For the purposes of this Article the following definitions apply:
  - (1) 'public or equivalent structural expenditure' means the gross fixed capital formation of the general government [...];

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<sup>1</sup> To be reviewed at a later stage depending on the outcome of the MFF negotiations.

- (2) 'gross fixed capital formation'<sup>1</sup> means all the resident producers' acquisitions, less disposals, of fixed assets during a given period and certain additions to the value of non-produced assets realised by the productive activity of producer or institutional units;
- (3) 'fixed assets' means all tangible or intangible assets produced as outputs from processes of production that are themselves used repeatedly, or continuously, in processes of production for more than one year;
- (4) 'general government' means the totality of institutional units which, in addition to fulfilling their political responsibilities and their role of economic regulation, produce principally non-market services (possibly goods) for individual or collective consumption and redistribute income and wealth<sup>2</sup>.

2. Support from the Funds for the Investment for growth and jobs goal shall not replace public or equivalent structural expenditure by a Member State.
3. Member States shall maintain for the period 2014-2020 a level of public or equivalent structural expenditure **on average per year** at least equal to the reference level set in the Partnership **Agreement**.

[...]

**In setting this reference level**, the Commission and the Member States shall take into account the general macroeconomic conditions and specific or exceptional circumstances, such as privatisations, [...] an exceptional level of public or equivalent structural expenditure by a Member State in the period 2007-2013 **and the evolution of other public investment indicators**. They shall also take into account changes in the national allocations from the [...] Funds as compared to the years 2007-2013.

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<sup>1</sup> As defined by the European System of Accounts (ESA) and transmitted by all 27 Member States in their Stability and Convergence Programmes.

<sup>2</sup> **Explanation**: The general government sector consists mainly of central, state and local government units together with social security funds imposed and controlled by those units. In addition, it includes non-profit institutions engaged in non-market production that are controlled and mainly financed by government units or social security funds.

4. Verification of whether the level of public or equivalent structural expenditure under the Investment for growth and jobs goal has been maintained for the period shall only take place in those Member States in which less developed [...] regions cover at least 15% of the total population.

In those Member States in which less developed [...] regions cover at least **65%** of the **total** population, the verification shall take place at national level.

In those Member States in which less developed [...] regions cover more than 15% and less than **65%** of the **total** population, the verification shall take place at [...] regional level. For that purpose, those Member States shall provide to the Commission information about the expenditure in the less developed [...] **regions** at each stage of the verification process.

5. The verification of whether the level of public or equivalent structural expenditure under the Investment for growth and jobs goal has been maintained shall take place at the time of submission of the Partnership **Agreement** (*ex ante* verification), in 2018 (mid-term verification), and in 2022 (*ex post* verification).

The detailed rules relating to the verification of additionality are set out in point 2 of Annex IV.

6. If it is established by the Commission in the *ex post* verification that a Member State has not maintained the reference level of public or equivalent structural expenditure under the Investment for growth and jobs goal set out in the Partnership **Agreement** as set out in Annex IV, the Commission may, **in relation to the degree of non-compliance**, carry out a financial correction. In deciding, **by means of an implementing act**, whether or not to carry out a financial correction, the Commission will take into account whether the economic situation of the Member State has significantly changed since the mid-term verification [...]. The detailed rules relating to financial correction rates are set out in point 3 of Annex IV.

7. Paragraphs 1 to 6 shall not apply to [...] programmes under the European territorial cooperation goal.

## ANNEX IV

### Additionality

#### 1. Public or Equivalent Structural Expenditure

**In those Member States in which less developed regions cover at least 65% of the population, the figure on gross fixed capital formation reported in the Stability and Convergence Programmes, prepared by Member States according to Council Regulation (EC) No 1466/97 to present their medium term budgetary strategy, will be used to determine public or equivalent structural expenditure. It [...] is reported** in column X-1, expressed as a share of GDP, according to Table 2 of Annex 2 of the "Guidelines on the format and content of Stability and Convergence Programmes"<sup>1</sup> [...];

**In those Member States in which less developed regions cover more than 15% and less than 65% of the population, the total figure on gross fixed capital formation in the less developed regions will be used to determine public or equivalent structural expenditure. It shall be reported in the same format.**

#### 2. Verification

Verifications of additionality in accordance with Article 86(5) are subject to the following rules:

##### 2.1. *Ex-ante* verification

- (a) When a Member State submits a Partnership **Agreement**, it shall provide information on the planned profile of expenditure in the format of Table 1 below. [...]

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<sup>1</sup> As endorsed by the ECOFIN Council on 7 September 2010.

Table 1

Expenditure of the General Government as a share of GDP	2014	2015	2016	2017	2018	2019	2020
P51	X	X	X	X	X	X	X

**(b) Member States, in which less developed regions cover more than 15% and less than 65% of the population, shall also provide information on the planned profile of expenditure in the less developed regions in the format of Table 2 below.**

Table 2

	2014	2015	2016	2017	2018	2019	2020
Gross Fixed Capital Formation of the General Government in the less developed regions as a share of GDP	X	X	X	X	X	X	X

- (c)** Member States shall provide to the Commission information on the main macroeconomic indicators and forecasts underlying the level of public or equivalent structural expenditure.
- (d)** **Member States, in which less developed regions cover more than 15% and less than 65% of the population, shall also provide to the Commission information on the method used to estimate gross fixed capital formation in these regions.**<sup>1</sup>

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<sup>1</sup> For a Member State entirely eligible for the Convergence objective in 2007-2013 and which has for the 2014-2020 period significantly changed the regional breakdown as defined in Regulation (EC) No. 1059/2003, the method used to estimate gross fixed capital formation in the regions may be based on national figures broken down by region in a proportional way.

- (e) Once there is agreement by the Commission and the Member State, Table 1 **and Table 2, where applicable**, above will be included in the Partnership **Agreement** of the Member State concerned as the reference level of the public or equivalent structural expenditure to be maintained in the years 2014-2020.

## 2.2. Mid-term verification

- (a) At the time of the mid-term verification, a Member State shall be deemed to have maintained the level of public or equivalent structural expenditure if the annual average of expenditure in the years 2014-2017 is equal to or higher than the reference level of expenditure set in the Partnership **Agreement**.
- (b) Following the mid-term verification, the Commission may revise, in consultation with a Member State, the reference level of public or equivalent structural expenditure in the Partnership **Agreement** if the economic situation of the Member State has significantly changed **from the one estimated at the time of** adoption of [...] the Partnership **Agreement**.

## 2.3. Ex post verification

At the time of the *ex post* verification, a Member State shall be deemed to have maintained the level of public or equivalent structural expenditure if the annual average of expenditure in the years 2014-2020 is equal to or higher than the reference level of expenditure set in the Partnership **Agreement**.

## 3. Financial Correction Rates Following Ex Post Verification

Where the Commission decides to carry out a financial correction in accordance with Article 86(6), the rate of financial correction shall be obtained by subtracting 3% from the difference between the reference level in the Partnership **Agreement** and the level achieved, expressed as a percentage of the reference level, and then dividing the result by 10. The financial correction shall be determined by applying that rate of financial correction to the Funds' contribution to the Member State concerned for the less developed [...] regions for the full programming period.

If the difference between the reference level in the Partnership **Agreement** and the level achieved, expressed as a percentage of the reference level in the Partnership **Agreement**, is 3 % or less, no financial correction shall be made.

The financial correction shall not exceed 5% of the Funds' allocation to the Member State concerned for the less developed [...] regions for the full programming period.

## TITLE V

### FINANCIAL SUPPORT FROM THE FUNDS

#### *Article 111*

#### **Modulation of the co-financing rates**

The co-financing rate from the Funds to a priority axis may be modulated to take account of:

- (1) the importance of the priority axis for the delivery of the Union strategy for smart, sustainable and inclusive growth, having regard to the specific gaps to be addressed;
- (2) protection and improvement of the environment, principally through the application of the precautionary principle, the principle of preventive action and the polluter pays principle;
- (3) the rate of mobilisation of private financing;
- (4) the coverage of areas with severe and permanent natural or demographic handicaps defined as follows:
  - (a) island Member States eligible under the Cohesion Fund, and other islands except those on which the capital of a Member State is situated or which have a fixed link to the mainland;
  - (b) mountainous areas as defined by the national legislation of the Member State;
  - (c) sparsely (less than 50 inhabitants per square kilometre) and very sparsely (less than 8 inhabitants per square kilometre) populated areas.