

BRIEFING FOR Member States

Ex ante conditionalities in the Common Provisions Regulation: A crucial tool to improve quality and delivery

March 2012

Environmental NGOs strongly support the Commission's proposals of ex ante conditionalities for the Common Strategic Framework (CSF) funds. Experience shows that CSF funds have had particular problems in coherently integrating environmental acquis and horizontal principles – problems that should be avoided in the future with ex ante conditionalities.

Environmental NGOs call for the support and improvement of specific ex-ante conditionalities to ensure a better quality and consistency of the CSF funds with Europe 2020 Strategy and EU environmental targets.

Environmental NGOs call on Member States to:

1. Support environmental and general ex ante conditionalities to improve the quality and delivery of programmes, plans and projects of CSF funds and reduce potential negative impacts;
2. Support specific provisions of ex-ante conditionalities on water, on impact assessments and on data collection and result indicators;
3. Improve specific provisions of ex ante conditionalities on energy efficiency, renewable energy, biodiversity, transport and on public procurement and partnership and transparency (see amendments in the annex).

1. WHY EX ANTE CONDITIONALITIES ARE NECESSARY

1. Past problems in CSF funds should not be repeated

Experience has shown that CSF funds lack a clear integrated policy framework to ensure that incentives for investments reward those actors who provide the greatest gains. The current system fails to properly contribute to EU objectives. The lack of a strategic approach has meant that the EU has failed to meet targets, such as the target to halt the loss of biodiversity by 2010, and has led to poor use of public resources.

2. Ex ante conditionalities will improve the quality of Cohesion Policy

Ex ante conditionalities do not duplicate the normal infringement procedures. The infringement process is a tool applied when MS have not transposed EU law correctly or haven't fulfilled legal obligations in time¹.

Ex ante conditionalities are the practical tools that will lead to smarter CSF funds and avoid wasting public money. These tools ensure that projects are adequately integrated in national strategies ensuring cost effectiveness, targeted and priority financing. As a result, this will improve the quality, the efficiency and the delivery of CSF funds – much needed in time of intensive pressure on public budgets, where better delivery of funds is a necessity for economic stability.

3. Ex ante conditionalities will help CSF funds to better contribute to EU targets

The welcomed result-orientation of the CSF funds proposed by the Commission requires the specific 'ex-ante conditionalities' tool to reduce potentially controversial programmes and projects that will not deliver on EU targets and objectives. Such controversial programmes cannot produce good results and contribute to agreed targets – thus being counterproductive for reaching Europe 2020 Strategy targets and the biodiversity target by 2020, supporting Flagship Initiatives and being more consistent with the EU long term climate target that has been agreed by the Council.

4. Clear ex ante conditionalities will clarify what is required to MS in CSF funds

Many MS and regions complain on the lack of clarity of CSF funds rules. If they are adequately framed, ex ante conditionalities will clarify precisely what will be requested, both on specific sectors (e.g. water) and on general principles (e.g. public procurement). As a result they have the potential to simplify the framework of the Cohesion Policy support, saying exactly what should be done and on which issue by when. Uncertainty and margins of interpretation lay in vague statements – on the opposite, ex ante conditionalities need to be based on very specific requirements that can be checked easily.

5. The balance between flexibility to act and suspension of payment is adequate

The Commission's proposal (article 17 the Common Provisions Regulation) is adequately balanced between the need to give MS time to act in order to adequately fulfill ex-ante conditionality (2 years), and the need to suspend payments in order to avoid wasteful projects – which is crucial for CSF funds delivery and credibility. In a time of austerity, it is even more unacceptable than ever to have scarce EU public funding being used for projects that have not been well identified and assessed as the most relevant and needed ones in a MS.

¹ In compliance with the Urban Wastewater Treatment Directive, France still had to collect and treat waste water in urban settlements of more than 15,000 inhabitants located in non-sensitive areas, before the 31st of December 2000. A first warning letter was sent to France on 9 July 2004 after information provided by France showed that a considerable number of agglomerations did not conform to the directive and that adequate infrastructure was not in place. A second and final warning was sent to France on 10th of December 2008. The Commission has taken France to court on the 20th of November 2009.

2. THE NEED TO SUPPORT AND IMPROVE SPECIFIC EX ANTE CONDITIONALITIES

Thematic ex ante conditionalities

1. Improving the ex ante conditionalities on energy efficiency

(Thematic objective 4, Low carbon economy)

By 2014, the Energy Efficiency Directive Energy will have replaced the Services Directive and the Cogeneration Directive, and should therefore be referenced.

An additional criteria is needed, based on existing legal obligations under the Energy Performance of Buildings Directive, Energy Services Directive and Ecodesign Directive.

*Improve
(amendment 1)*

2. Improve the ex ante conditionalities on renewable energy

(Thematic objective 4, Low carbon economy)

The second criteria for fulfilment proposed by the Commission is irrelevant as all Member States have already adopted a National Renewable Energy Action Plan. It is therefore necessary to insist on Member States provisions for the mid-term framework for renewable energy investments.

*Improve
(amendment 2)*

3. Support the ex ante conditionalities on water

(Thematic objective 6, Environment and sustainable use of resources)

The first criteria for fulfilment ensures an adequate cost recovery for water. It is a crucial requirement from Art.9 of the Water Framework Directive which is essential to be able to properly select the projects that deserve CSF support.

The second criteria for fulfilment is the adoption of a river basin management plan, that is needed to ensure that projects supported by CSF funds undergo a proper integrated procedure at national level, with cost effectiveness analysis, problem identification, risk analysis and public participation.

Support

4. Add ex ante conditionalities on biodiversity

(Thematic objective 6, Environment and sustainable use of resources)

Prioritised Action Frameworks for financing the Natura 2000 networks, as presented in the Habitats Directive, are an effective instrument to make the integrated funding approach for the Natura 2000 network a reality through defining which actions are most needed and which EU funds can contribute best to achieve the given goals. Adopting such national plans will greatly improve the strategic approach to financing Natura 2000.

*Add
(amendment 3)*

5. Improve ex ante conditionalities on transport

(Thematic objective 7, Transport)

The climate assessment of the Strategic Environmental Assessment (SEA) should enable policy-makers to evaluate the overall climate impacts, expressed in terms of net change in greenhouse gas emissions, measured against contribution to EU objectives for climate protection.

In addition, provisions are needed to ensure that national user charging systems are applied on all projects (including roads) receiving EU co-financing and the revenues are used for recovery of the infrastructure costs, thus lowering necessary co-financing.

*Improve
(amendment 4)*

General ex ante conditionalities

1. Improve ex ante conditionalities on public procurement

(Area 4, Public procurement)

Public procurement Directives (2004/17/EC and 2004/18/EC) include provisions regarding integration of environmental considerations into public procurement strategies. Green Public Procurement (GPP) represents a win-win approach boosting innovative environmental products and services in public procurement. GPP national strategies would improve the quality of CSF funds, where many projects often use public procurement.

*Improve
(amendment 5)*

2. Support ex ante conditionalities on Impacts Assessments

(Area 6, EIA and SEA)

It is logical that MS must complete and transpose EIA and SEA directives first to be able to adequately assess programmes and plans and select projects. This increases the effectiveness of the implementation and application of environmental legislation.

Support

3. Support ex ante conditionalities on data collection and result indicators

(Area 7, Statistical systems and result indicators)

Multi-annual plan for timely collection and aggregation of data needs to be in place to evaluate and assess the effectiveness and impact of the CSF funds.

Support

4. Add ex-ante conditionalities on partnership and transparency

(Area 8, Partnership and transparency - new)

The implementation of the partnership principle varies between Member States and regions. The European Code of conduct on Partnership will set a minimum common level playing field. The ex-ante conditionality will ensure effective implementation of the Code of Conduct . Transparency should also be a pre-condition to make the partnership principle meaningful and deliver improved Cohesion Policy projects.

*Add
(amendment 6)*

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ANNEX: SPECIFIC AMENDMENTS ON EX ANTE CONDITIONALITIES

Thematic ex ante conditionalities
Amendment 1. Improve thematic ex ante conditionalities on energy efficiency (Annex IV)

Text proposed by Commission	Amendment	
4. Supporting the shift towards a low-carbon economy in all sectors (referred to in Article 9(4))	4. Supporting the shift towards a low-carbon economy in all sectors (referred to in Article 9(4))	
4.1. Energy efficiency (...)	4.1. Energy efficiency (...) (...)	
	Ex-ante conditionality	Criteria for fulfillment
	(new) Transposition into national law, once adopted, of the Energy Efficiency Directive (COM(2011)370 final)	– Implementation of minimum requirements related to the energy performance of buildings required in line with Article 3, Article 4 and Article 5 of Directive 2010/31/EU
	(new) Transposition into national law of Directive 2009/125/EC of the European parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast)	(new) – Setting intermediate targets for improving the energy performance of new buildings, by 2015, with a view to preparing the implementation of nearly zero energy buildings, according to Article 9.3(B) of Directive 2010/31/EU.
		– Adoption of measures necessary to establish a system of certification of the energy performance of buildings in accordance with Article 11 and Article 18 of Directive 2010/31/EU;
		– Realisation of the required rate of renovation of public buildings;
		– Final customers are provided with individual meters;
		– Efficiency in heating and cooling is promoted according to Directive 2004/8/EC. Article 9(4))
		(new) – National Energy Efficiency Action Plans which translate energy saving objectives into concrete and coherent measures have been submitted in accordance with Directive 2006/32/EC, or equivalent reporting documents in application to the Directive on Energy Efficiency when it will be repealing Directive 2006/32/EC.
		(new) – Market surveillance mechanisms in accordance with Article 3 of Directive 2009/125/EC are in place.

Justification: The Energy Services Directive (Directive 2006/32/EC) and the Cogeneration Directive (Directive 2004/8/EC) will be replaced by the Energy Efficiency Directive. As its adoption is expected at the latest in 2013, the ex-ante conditionality on energy efficiency should include this new piece of legislation to be still relevant in 2014.

The additional criteria to be fulfilled are based on existing legal obligations under the Energy Performance of Buildings Directive, Energy Services Directive and Ecodesign Directive. There is also a reference to reporting obligation under the Energy Efficiency Directive (now under discussion), which will be the relevant piece of legislation on energy efficiency in 2014.

Amendment 2. Improve thematic ex ante conditionalities on renewable energy (Annex IV)

Text proposed by Commission	Amendment
4. Supporting the shift towards a low-carbon economy in all sectors (referred to in Article 9(4))	4. Supporting the shift towards a low-carbon economy in all sectors (referred to in Article 9(4))
4.2. Renewable energy (...)	4.2. Renewable energy (...) (...)
Criteria for fulfillment	Criteria for fulfillment
<p>– A Member State has put in place transparent support schemes, priority in grid access and in dispatching, standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public;</p> <p>– A Member State has adopted a national renewable energy action plan in accordance with Article 4 of Directive 2009/28/EC.</p>	<p>– A Member State has put in place transparent support schemes, priority in grid access and in dispatching, standard rules relating to the bearing and sharing of costs of technical adaptations which have been made public;</p> <p>– A Member State has put in place support schemes for the three renewable energy sectors until 2020: electricity, heat and transport, hence ensuring mid-term investor confidence.</p>

Justification: The second criteria for fulfilment proposed by the Commission is irrelevant: all Member States have already adopted a National Renewable Energy Action Plan. It is necessary to insist on the mid-term framework that Member States provide for renewable energy investments.

Amendment 3. Improve thematic ex ante conditionalities on biodiversity (Annex IV)

Text proposed by Commission	Amendment	
6. Protecting the environment and promoting the sustainable use of resources (referred to in Article 9(6)) (...)	6. Protecting the environment and promoting the sustainable use of resources (referred to in Article 9(6)) (...)	
	Ex-ante conditionality	Criteria for fulfillment
	(new) 6.3. Biodiversity The Member State has submitted, and together with the European Commission has adopted a multi-annual plan for prioritization and budgeting of investments for Natura 2000 sites (Prioritised Action Framework) in accordance with Article 8 of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. Partnership Contracts and programmes drawn up in the framework of the CSF (including all relevant funds) shall be consistent with the national Prioritised Action Frameworks for financing Natura 2000.	(new) - The Member State has adopted a multi-annual plan for prioritization and budgeting of investments in accordance with Article 8 of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (national Prioritised Action Frameworks for financing Natura 2000), including: 1. A list of priority measures in Natura 2000 sites and respective EU co-financing needs; 2. An analysis of co-financing sought from different EU funds to realise those measures; - The relevant measures listed in the national Prioritised Action Frameworks for financing Natura 2000 are included in the Partnership Contracts and Operational Programmes as relevant under the different EU funding lines covered by this regulation.

Justification: Member States and the Commission have agreed in 2004 that the best possibility to finance Natura 2000 is to integrate resources in different EU sectorial funding lines. Natura 2000 has an estimated financing need of 6 billion Euros per year in the EU27². Currently, EU Funds contribute 9-19% of this³, which is clearly insufficient to achieve the EU's ambitious biodiversity objective. Prioritised Action Frameworks for financing Natura 2000 as presented in the Habitats Directive are an effective instrument to make the integrated funding approach for Natura 2000 a reality through defining which actions are most needed and which EU funds can contribute best to achieve the given goals.

² This estimation is based on country-specific assessment made by 25 individual EU Member States in 2008 on request of the European Commission. The overall figure for 25 MS has been extrapolated for 27 MS. Source: European Commission

³ Institute for European Environmental Policy (2011), Assessment of the Natura 2000 co-financing arrangements of the EU financing instruments

Amendment 4. Improve thematic ex ante conditionalities on transport (Annex IV)

Text proposed by Commission	Amendment	
7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7))	7. Promoting sustainable transport and removing bottlenecks in key network infrastructures (referred to in Article 9(7)) 7.1 Road (...)	
	Ex-ante conditionality	Criteria for fulfillment
	(new) Transposition and application of Directive 2011/76/EU on the charging of heavy goods vehicles for the use of certain infrastructures.	A comprehensive transport plan is in place that contains: (...) - a strategic environmental assessment fulfilling the legal requirements for the transport plan; including an assessment of the overall greenhouse gas impacts of implementation of the plan to 2030 and 2050; (new) – National road user charging systems in place, in line with the provisions of 2011/76/EU, including recovery of costs for infrastructure, noise and air pollution, applied on all motorways since the beginning of their operation.
	7.2 Railway (...)	
	Ex-ante conditionality	Criteria for fulfillment
	(new) Transposition of Directive 2001/14/EC	A chapter on railway development within the comprehensive transport plan is in place that contains: (...) - a strategic environmental assessment fulfilling the legal requirements for the transport plan; including an assessment of the overall greenhouse gas impacts of implementation of the plan to 2030 and 2050 (new) – Infrastructure charges do not exceed the costs of infrastructure operation and maintenance, including external costs. Infrastructure charging schemes may not discriminate against freight operators.

Justification: The climate assessment of the SEA should enable policy-makers to evaluate the overall climate impacts, expressed in terms of net change in greenhouse gas emissions, measured against contribution to EU objectives for climate protection.

In addition, provisions are needed to ensure that national user charging systems are applied on all projects (including roads) receiving EU co-financing and the revenues are used for recovery of the infrastructure costs, thus lowering necessary co-financing. Rail access charges should cover only the operational costs of the infrastructure, not new or previous investments. Cross-subsidizing passenger traffic by freight operators should also be avoided this way.

General ex-ante conditionalities

Amendment 5. Improve general ex ante conditionalities on public procurement (Annex IV)

Text proposed by Commission	Amendment
4. Public procurement	4. Public procurement
Criteria for fulfillment	Criteria for fulfillment
Effective implementation and application of Directives 2004/18/EC and 2004/17/EC is ensured through: (...)	Effective implementation and application of Directives 2004/18/EC and 2004/17/EC is ensured through: (...) (new) – a national strategy for allowing and incentivizing the development of Green Public Procurement (GPP)

Justification: In March 2004, the EU adopted two new public procurement directives, which included provisions regarding integration of environmental considerations into public procurement strategies. This is Green Public Procurement (GPP), which represents a win win approach boosting innovative environmental products and services in public procurement.

Amendment 6. Improve general ex ante conditionalities on partnership and transparency (Annex IV)

Text proposed by Commission	Amendment	
	New: 8. Partnership and transparency	
	Ex-ante conditionality	Criteria for fulfillment
	(new) The existence of a mechanism which ensures effective implementation and application of the European Code of Conduct for Partnership. The existence of a mechanism which ensures transparency of CSF programming, implementation and monitoring.	(new) Effective implementation of partnership principle is ensured through: <ul style="list-style-type: none"> ▪ Complete and adequate application of the European Code of Conduct for Partnership; ▪ Effective representation of civil society organisations and other socio-economic partners in the programming, implementation, monitoring and evaluation of Partnership Contracts and programs; ▪ Criteria and indicators. Effective public access to information on CSF programming, implementation, spending and monitoring at national level is ensured through: <ul style="list-style-type: none"> ▪ Full and timely disclosure of the above information; ▪ Measures to enforce the legal provisions on public access to information.

Justification: The implementation of the crucial partnership principle has varied a lot between Member States and regions. A minimum common level playing field is required through the the Code of conduct on Partnership developed by the European Commission. However, so far the institutional guarantee for compliance is missing. That fore the effective implementation of the Code of Conduct shall become ex-ante conditionality. Transparency is another pre-condition to make the partnership principle meaningful.