

## Thematic ex ante conditionalities for thematic objectives 8 to 11 and general ex ante conditionalities 1 to 3

### Overview comments/questions MS on ex-ante conditionality

#### Thematic ex ante conditionalities

##### EAC 8.1. Access to employment

- Assessment grid: relevant stakeholders
  - The list has an excessive detail with respect to the type of "relevant stakeholders". The relevant stakeholders should be identified at national/ regional level based on the characteristics of MS. Note that this detailed list has not been proposed in other similar cases (e.g EAC 8.4).

##### Reply

It is clear from the assessment grid that the COM does not require that there are cooperation arrangements with all the stakeholders included in the list. The text of the sub-criterion reads as follows :

*'There are cooperation arrangements with relevant stakeholders which can include'*

- Please clarify what "enhanced transnational labour mobility" means in connection to EURES (also under EAC 8.3.)

*'Actions to provide access to more employment opportunities through **enhanced transnational labour mobility (EURES)** and transfer of vacancies to the EURES Job Mobility Portal have been set up.'*

##### Reply

The word 'enhanced' has been deleted and the sub-criterion now reads:

*'Actions to provide access to more employment opportunities through transnational labour mobility (EURES) and transfer of vacancies to the EURES Job Mobility Portal have been set up'.*

##### EAC 8.2. Self-employment

- May we kindly ask to update the information on the publication date of OECD annual report on Inclusive Entrepreneurship?

##### Reply

The guidance has been updated. The report is available here:

<http://www.oecd.org/employment/leed/annual-reports.htm>

### EAC 8.3. Labour market institutions

- Assessment grid:

- The list for the criterion '*Reform of employment services will include the creation of formal or informal cooperation networks with relevant stakeholders:*' is believed to be excessively detailed with respect to the type of "relevant stakeholders". The relevant stakeholders should be identified at national / regional level based on the characteristics of MS. Note that this detailed list has not been proposed in other similar cases (e.g. 8.4)

#### **Reply**

It is clear from the assessment grid that the COM does not require that there are cooperation networks with all the stakeholders included in the list. The text of the sub-criterion reads as follows :

*'Depending on the identified needs, reform actions include'*

### EAC 9.1. Active inclusion

- Definitions

We propose to delete the reference to the Recommendation: ~~and has the main characteristics of the comprehensive and integrated active inclusion strategy described in the 2008 Recommendation on active inclusion.~~

One of the characteristics of EAC, as described in the Part I of the Guidance, is: "they are built on already existing obligations for MS and avoiding multiplication of obligations or going beyond already existing requirements".

#### **Reply**

The Recommendation on active inclusion is already part of the existing commitments. The 2008 Council Conclusions<sup>1</sup> on common active inclusion principles have endorsed "the aim of designing and implementing comprehensive and integrated national strategies to promote the active inclusion of people excluded from the labour market, combining adequate income support, inclusive labour markets and access to quality services on the basis of the common principles and guidelines identified in the European Commission Recommendation."

- Definitions : 'sufficient evidence base'

We propose to express the definition as follows: "Sufficient evidence base means the state of active inclusion strategy in the respective Member State based on indicators on active inclusion<sup>2</sup>. The indicators ~~have to~~ may look at areas such as adequacy and coverage of adequate income

<sup>1</sup> See Council Conclusions of 17 December 2008 on 'Common active inclusion principles to combat poverty more effectively'.

<sup>2</sup> See the *Foundations and structures for a Joint Assessment Framework (JAF), including an Employment Performance Monitor (EPM) to monitor the Employment Guidelines under Europe 2020*.

support, jobless households, in-work poverty, financial disincentives, as well as, access to education (for the low skilled adults), healthcare, and housing. ~~There has to be evidence of integrated service delivery (for instance "one-stop-shops") or credible plans on the implementation of integrated approach.~~

We propose to replace “have to” with “may”, as the list of indicators does not derive from already existing obligations for MS.

The guidance exceeds the scope covered by the agreed criteria in the regulation (i.e. “sufficient evidence base to develop policies for poverty reduction and monitor developments”). The criterion addresses evidence base for policy development and monitoring of developments, and not a way of service delivery.

**Reply**

Please see the answer above on existing commitments.

Integrated service delivery is part of Member States' commitment. The 2008 Council Conclusions on common active inclusion principles emphasize that "to be successful, active inclusion strategies should adopt a holistic approach and be implemented in an integrated and coordinated way, involving all levels of government."

- Table No. 5: The fulfilment and non-fulfilment of criteria (Assessment grid)

We propose the following wording to be used for fulfilment of the criteria *provides a sufficient evidence base to develop policies for poverty reduction and monitor developments*: “~~is based on an analysis of the Member State's poverty reduction potential~~ consistent with the specific situation of the Member State (at the relevant territorial levels) and is based on indicators relevant to active inclusion”

We cannot accept the footnote, because examples (measures) in the brackets may not be those that reduce at risk of poverty or social exclusion, and use of the term “capacity of MS” is confusing, especially if associated with assessment of institutional capacity.

**Reply**

The footnote – that explains 'poverty reduction potential' – only contains examples and this is made clear in the updated guidance. The analysis will take into consideration the country specific situation. The explanation of poverty reduction potential has been amended and now reads as follows:

Poverty reduction potential refers to the ability of MS to reduce poverty through certain actions (for instance increasing coverage of benefits, extending access to services, etc.).

- The assessment of fulfilment of the conditionality should be linked only to the labour market strand, given the Treaty basis for ESF (p. 256)

**Reply**

The 2008 Council Conclusions on common active inclusion principles<sup>3</sup> acknowledge that "active inclusion entails a combination of adequate income support, inclusive labour markets and access to quality services. Active inclusion policies are intended for all those excluded from the labour market by supporting them with the resources they need to lead a dignified life and with opportunities for social participation, and promoting access to quality and lasting employment that corresponds to their aptitudes and abilities." Furthermore, they invite the Commission and the Member States "in accordance with their respective competences, to mobilise the resources of the Structural Funds, and in particular the European Social Fund, to support active inclusion measures, in line with national labour market circumstances and priorities."

- "Furthermore the text needs to be more consistent with the criteria in the regulations and also recognise Member States' competence for social policy (as in A17.3). Suggested amendments are below
  - There is a national poverty and social inclusion target (as defined in the National Reform Programme).
  - Taking account of Member State competence and responsibility for social policy, when addressing the challenges of implementing an active inclusion strategic policy framework, there references where appropriate on how tackling challenges (such as low coverage, inadequate income support, in-work poverty, lack of access to services, or lack of integrated approach) contributes to the overall poverty reduction target.

**Reply:** the guidance has been amended accordingly.

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<sup>3</sup> See Council Conclusions of 17 December 2008 on 'Common active inclusion principles to combat poverty more effectively'.

## EAC 9.2. Integration of marginalised communities

- Monitoring system: Despite the reasonability for what is asked under the monitoring system, the exercise goes beyond what has been previously agreed.

### **Reply**

As regards **monitoring**: there is no request for ethnic data collection, but a requirement to have a monitoring system to measure the impact of the national Roma integration strategy (or set of policy measures). This requires a baseline, quantifiable targets and indicators to measure progress in reaching those targets. The text clearly states that collaboration with National Statistical Offices is to take place only where this is possible. As the quotes below demonstrate, the expectations under this sub-criterion do not go beyond what was previously agreed within the EU Framework for National Roma Integration Strategies (NRIS).

The wording of the sub-criteria of the ex ante conditionality is fully in line with the April 2011 **Communication on an EU Framework for National Roma Integration Strategies up to 2020** that the **EPSCO Council of May 2011** and the **European Council of June 2011** have endorsed, which stated the following:

"When developing national Roma integration strategies, Member States should bear in mind the following approaches: (...) **Include strong monitoring methods to evaluate the impact of Roma integration actions and a review mechanism for the adaptation of the strategy.**" (...)

### **8. MEASURING PROGRESS: PUTTING IN PLACE A ROBUST MONITORING SYSTEM**

At present, it is difficult to obtain accurate, detailed and complete data on the situation of Roma in the Member States and to identify concrete measures put in place to tackle Roma exclusion and discrimination. It is not possible to assess whether such measures have given the expected results. It is therefore important to collect reliable data. This is why it is necessary to put in place a **robust monitoring mechanism** with clear benchmarks which will ensure that tangible results are measured, that money directed to Roma integration has reached its final beneficiaries, that there is progress towards the achievement of the EU Roma integration goals and that national Roma integration strategies have been implemented."

The May 2011 **EPSCO Conclusions** endorsing the above Communication also explicitly mention putting in place a monitoring mechanism:

"WELCOMES:

19. the Communication of the Commission on an EU Framework for National Roma Integration Strategies up to 2020, which invites Member States to adopt or develop further a comprehensive approach to Roma inclusion, and encourages them to set achievable national goals in the fields of education, employment, healthcare and housing, as well as to **put in place a monitoring mechanism** (...);

Moreover the section on "Monitoring and evaluating policies" of the **Council Recommendation on effective Roma integration measures in the Member States** (adopted by EPSCO on 9 December 2013<sup>4</sup>) includes the following specific references to baselines, targets and indicators:

3.4. **Appropriately monitor and evaluate the effectiveness of their national strategies** or integrated sets of policy measures within their broader social inclusion policies. This could be done by means of measures such as **setting baselines** or **measurable targets** or by collecting relevant qualitative or quantitative data on the social and economic effects of such strategies or measures, in line with applicable national and Union law, particularly regarding the protection of personal data.

<sup>4</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/lisa/139979.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lisa/139979.pdf)

3.5. Make use of any relevant core **indicators** or methods of empirical social research or data collection for monitoring and evaluating progress on a regular basis, **particularly at the local level**, enabling efficient reporting on the situation of Roma in the Member States with the optional support of the European Union Agency for Fundamental Rights.

- The criteria to mainstream the Roma inclusion into the regional and local agenda having transparent and appropriate budgets for each plans go over what is previously agreed and over what can be set at national level (especially for those MS where the competence for such policy is not national).

### **Reply**

#### **As regards mainstreaming of Roma inclusion into local action plans with appropriate budgets**

This sub-criterion is in line with the key documents of the EU Framework for NRIS which have been endorsed by the Council and is also in line with the Council Recommendation adopted on 9 December 2013. See specific references below on the development, funding, implementation and monitoring of local actions plans as well on the involvement of local authorities and civil society in the development, implementation and monitoring of NRIS.

#### **2011 Communication on an EU Framework**

2. A NEED FOR A TARGETED APPROACH: AN EU FRAMEWORK FOR NATIONAL ROMA INTEGRATION STRATEGIES

**To achieve significant progress towards Roma integration, it is now crucial to step up a gear and ensure that national, regional and local integration policies focus on Roma in a clear and specific way, and address the needs of Roma with explicit measures to prevent and compensate for disadvantages they face.**

**Council Recommendation of 9.12.2013: References to mainstreaming Roma inclusion to local agendas and funding local action:**

" RECOMMENDS THAT MEMBER STATES

(..)

1.9. **Allocate adequate funding for the implementation and monitoring of their national and local strategies and action plans** from any available sources of funding (local, national, Union and international) with a view to achieving the objective of Roma integration through mainstream or targeted measures. (...)

#### *Local action*

3.1. While respecting the competences of regional and local authorities, **encourage those authorities to develop local action plans or strategies, or sets of local policy measures within wider social inclusion policies, which could include baselines, benchmarks and measurable objectives for Roma integration as well as appropriate funding.**

3.2. **Involve regional and local authorities and local civil society in developing, implementing and monitoring their national strategies** or integrated sets of policy measures within broader social inclusion policies. Relevant representatives and stakeholders should be involved as regards partnership agreements and operational programmes co-financed by the ESIF. Central and local authorities should cooperate in the implementation of those strategies.

To this end, support local public authorities so as to facilitate the implementation of sets of policy measures at local level. (...)"

### EAC 9.3. Health

- Assessment grid: The criteria are deemed to be over-detailed, making any possible expenditure in the sector rather difficult.

#### Reply

As signalled by the word 'may', the list is a list of options, none of them mandatory per se; each option represents rather a chance to meet the ex ante conditionality sub criterion in question. The sub criterion is not related to or requiring any special expenditure. Most Member States already have measures of this kind in force.

### EAC 10.1. Early school leaving

- Definitions: the 'further guidance and explanation' of a strategic policy framework should be deleted. This term is defined in the regulation and should not be expanded on.

#### Reply

The 'further guidance and explanation' makes it clear that this is not the definition. It aims to support desk officers in better understanding the definition, which is very general, and to contextualise it to the different national systems.

- Page 225 and p232: There is a reference to the Council recommendation on ESL. It should be noted that this was non-legislative and non-binding on Member States.

#### Reply

The Council recommendation indeed is purely a recommendation. However, this does not imply that it cannot be included in the list of background documents as the ex-ante conditionality is based on this recommendation.

- Page 229: As noted above, the Commission cannot assess the content of strategies or strategic policy frameworks. The list of measures at the end is too specific and the Commission should not be second-guessing the Member State on whether the measures have, for example, the potential to remove the described obstacles.

#### Reply

The list of measures is based on existing evidence and on the work carried out within the framework of the Open Method of Coordination. It is up to the Member States to identify the measures which best fit their situation and which have the highest potential to improve it given the specific national circumstances.

## EAC 10.2. Higher education

- The extensive references to measures aimed at supporting “*Marginalised communities*” could make fulfillment for MS too onerous. The reference made to an “analysis” is necessary to define a strategy. However, the request is believed to be too detailed.

### Reply

The essential objective here is to support widened access to higher education for those groups of society which are (and have traditionally been) under-represented, as a means to maximise development of human capital and promote social equity. These are goals shared across all Member States.

It is, however, up to each Member State to identify which sections of society are “under-represented” in their national context and to develop appropriate measures. As a general rule, improving the performance of under-represented (or marginalised) groups at school (combatting early school leaving and promoting successful completion of secondary school) is a pre-requisite to significant widening of access in higher education. The focus in higher education can be on such measures as improved outreach to encourage participation, enhanced student support within higher education and, potentially, financial support such as additional scholarships.

It is recognised that not all Member States have detailed data on the socio-economic composition of their student cohorts, although many Member States do collect and analyse such information. It would be desirable for such data to be collected and analysed in the remaining Member States.

- Assessment grid: the sub-criterion on the analysis and data availability is too detailed

### Reply

It is recognised that quantitative data on programme content and learning outcomes will not be available. The expectation would be that a qualitative assessment is provided to justify why support for developing publicly supported measures in this area is needed. This assessment may take into account, for example, views from relevant stakeholder bodies, ad hoc studies, survey results (students, graduates, employers). It should be noted that the recent OECD PIAAC results provide some indication of the level of core transversal skills (advanced literacy, numeracy and problem-solving) among recent tertiary education graduates for countries participating in that exercise.



### EAC 10.3. Lifelong learning

- Page 248: the criteria for fulfilment refer more generally to transparency tools and includes a non-exhaustive list. The second bullet however has removed the “for example” and made the list definitive. The text should be amended as below.

Where relevant are measures to implement transparency tools (for example, the European Qualifications Framework Recommendation and a National Qualifications Framework, the European Credit system for Vocational Education and Training, the European Quality Assurance in Vocational Education and Training.)

#### Reply

The Commission services cannot agree to adding "where relevant", since the implementation of transparency tools are relevant in the same way in all Member States. Moreover, the applicability check will need to take into account the relevance of the various transparency tools in the light of the specific objectives defined for the investment priority concerned, so this addition would be redundant.

The wording "for example" has been included, which is in line with the drafting used in the Regulation.

While the Regulation does not refer to the Recommendation on the validation of non-formal and informal learning, the list is non-exhaustive and therefore there is no reason to delete it from a non-exhaustive list of tools. In any case, MS provisions for validation will also be assessed as part of the first criterion, since this is an essential element of lifelong learning policy frameworks.

The second bullet point has been amended as follows in the updated guidance:

"There are measures to implement transparency tools, for example the European Qualifications Framework Recommendation and a National Qualifications Framework, the European Credit system for Vocational Education and Training, the European Quality Assurance in Vocational Education and Training, the Recommendation on validation of non-formal and informal learning."

## General ex ante conditionalities

### **B.1 Anti-discrimination**

- Assessment grid:
  - The fulfilment and non-fulfilment of criteria

We propose the following wording to be used for fulfilment of the criteria *Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for the promotion of equal treatment of all persons throughout the preparation and implementation of programmes, including the provision of advice on equality in ESI fund-related activities:*

~~“A plan has been elaborated~~ Arrangements made to consult with and involve ~~bodies in charge of anti-discrimination~~ promoting equal treatment of all persons” and “The ~~plan~~ arrangements indicates steps taken to facilitate ~~active~~ involvement of the national equality body.”

The term “a plan” should be further clarified. A plan is superfluous if the relevant bodies are involved de facto (e.g. are members of the Monitoring Committee etc.). Arrangements are described in the PA and the OP.

#### **Reply**

The Commission services do not share this view:

1) A "plan" means a coherent set of measures that shows a coherent, sustainable and effective approach, and include priorities, a time schedule, etc. "Arrangements" is a more generic term, it may easily take the form of any single, isolated action without any guarantee about its consistency and sustainability. Using the term 'a plan' makes the term "arrangements" (which is included in the criteria) more concrete. Moreover, the term 'plan' is not to be interpreted as a rigid requirement (no specific form is prescribed), as anyhow each Member State has a margin of manoeuvre and flexibility on what and how to include in its plan.

2) As regards the equality bodies, it has to be noted that their "active involvement" does not contrast at all with the fact that each Member State has its own settings and responsibilities with regard to the role of the Equality Body (of course in accordance with the Union directives). Flexibility, again, is ensured: the "active involvement" of the Equality Body may take different forms, e.g. co-ordination, advice, support, etc.

3) Finally, the criteria explicitly refer to "*arrangements in accordance with the institutional and legal framework of Member States...*": this also includes the roles and governance of the Equality Bodies, so that again this wording does not go beyond the legal requirements

- We cannot accept the wording “bodies in charge of anti-discrimination”. In our country, there are shared responsibilities, e.g. the Ombudsman is a national equality body, State Labour Inspectorate is responsible for antidiscrimination in the field of labour relations, the Ministry of Culture is responsible for society integration policy

and Roma integration. Thus we propose the wording “bodies combating discrimination” or “bodies promoting equal treatment of all persons”.

As Ombudsman is independent institution it may choose not to involve itself actively. “Active involvement” raises also issue of resources and possible conflict of interest if technical assistance resources were used to support active involvement of national

**Reply**

1) With regard to the terminological remark on ‘*bodies in charge of anti-discrimination*’ and the proposed changes, the justification for the proposed change and the difference between the definitions are not clear.

2) The issue of a potential conflict of interest if an independent body is involved in the process is not a justification for excluding those bodies. On the contrary, they should be involved because they are independent. In any case this involvement is done in accordance with their independent mandate set out in national rules.

**B.2 Gender equality**

- Assessment grid : The fulfilment and non-fulfilment of criteria

There is a separate chapter on horizontal principles in the PA and the OP describing the arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for gender equality throughout the preparation and implementation of programmes. Thus:

We propose the following wording to be used for fulfilment of the criteria *Arrangements in accordance with the institutional and legal framework of Member States for the involvement of bodies responsible for gender equality throughout the preparation and implementation of programmes, including the provision of advice on gender equality in ESI Fund-related activities:*

~~“A plan has been elaborated~~ Arrangements are made to consult with and involve bodies in charge of the promotion of gender equality.” and “The ~~plan~~ arrangements indicates steps taken to facilitate active involvement of the national equality body.”

**Reply**

See the reply under point B.1 on anti-discrimination.

### B.3 Disability

- Assessment grid : The fulfilment and non-fulfilment of criteria

The term “a plan” should be further clarified. A plan is superfluous if the relevant bodies are involved de facto (e.g. are members of the Monitoring Committee etc.). Arrangements are described in the PA and the OP. Thus:

We propose the following wording to be used for fulfilment of the criteria *Arrangements in accordance with the institutional and legal framework of Member States for the consultation and involvement of bodies in charge of protection of rights of persons with disabilities or representative organisations of persons with disabilities and other relevant stakeholders throughout the preparation and implementation of programmes:*

~~“A plan has been elaborated~~ Arrangements made to consult with and involve bodies in charge of protection of rights of persons with disabilities, such as independent monitoring mechanisms established under Art. 33(2) of the UN CRPD or relevant civil society representatives, in particular representative organisations of persons with disabilities, in the ESI Funds cycle.”

#### **Reply**

See also the reply under point B.1 on anti-discrimination.

The guidance, in particular the assessment grid, should allow assessing the fulfilment of the ex-ante conditionality criteria. Therefore it should be more detailed than the criteria themselves and not merely repeat the wording of the latter. For this reason the sub-criteria for practical assessment should be maintained, including that:

- "the plan identifies the actors to be involved and their role;"
- and "the plan indicates steps taken to facilitate active involvement of these actors and participation, including in terms of accessibility measures."