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**COMMISSION STAFF WORKING DOCUMENT**

**The Value Added of Ex ante Conditionalities in the European Structural and  
Investment Funds**

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## **Abbreviations**

<b>CEF</b>	<b>Connecting Europe Facility</b>
<b>CF</b>	<b>Cohesion Fund</b>
<b>CPR</b>	<b>Common Provisions Regulation on ESI Funds</b>
<b>CSR</b>	<b>Country-specific recommendation</b>
<b>EAFRD</b>	<b>European Agricultural Fund for Rural Development</b>
<b>ECA</b>	<b>European Court of Auditors</b>
<b>EFSI</b>	<b>European Fund for Strategic Investments</b>
<b>EIA</b>	<b>Environmental Impact Assessment</b>
<b>EMFF</b>	<b>European Maritime and Fisheries Fund</b>
<b>ERDF</b>	<b>European Regional Development Fund</b>
<b>EQUAVET</b>	<b>European Quality Assurance in Vocational Education and Training</b>
<b>ESF</b>	<b>European Social Fund</b>
<b>ESI Funds</b>	<b>European Structural and Investment Funds</b>
<b>ExAC</b>	<b>Ex ante conditionality/ies</b>
<b>FEAD</b>	<b>Fund for the European Aid to the Most-Deprived</b>
<b>GBER</b>	<b>General Block Exemption Regulation</b>
<b>ICT</b>	<b>Information and communications technology</b>
<b>NAS</b>	<b>National Adaptation Strategy</b>
<b>NGN</b>	<b>Next Generation Network</b>
<b>R&amp;D</b>	<b>Research and development</b>
<b>R&amp;I</b>	<b>Research and innovation</b>
<b>RTD</b>	<b>Research and technology development</b>
<b>SBA</b>	<b>Small Business Act</b>

<b>SME</b>	<b>Small and medium-sized enterprises</b>
<b>SEA</b>	<b>Strategic Environmental Assessment</b>
<b>SWOT</b>	<b>Strengths, Weaknesses, Opportunities and Threats</b>
<b>UNCRPD</b>	<b>United Nations Convention on the rights of persons with disabilities</b>
<b>QMS</b>	<b>Quality Management System</b>
<b>VET</b>	<b>Vocational education and training</b>

## A. Introduction

The effectiveness of public investments and the durability of their results depend on having in place suitable policy, regulatory and institutional conditions. Indeed, unsound policy frameworks and regulatory, administrative and institutional weaknesses are major systemic bottlenecks hindering effective and efficient public spending.

It is therefore of the utmost importance that such systemic weaknesses are identified upfront and addressed in a proactive manner so that the prerequisites for an optimal use of resources from the EU budget are in place<sup>1</sup>.

This is why one of the key reforms for the 2014-20 programming period of the European Structural and Investment Funds (ESI Funds)<sup>2</sup> was the introduction of ex ante conditionalities (ExAC), setting sector-specific and horizontal conditions to be met at an early stage of implementation and by the end of 2016 at the latest.

While linked to support from the ESI Funds and beneficial thereto, ExAC have had a much wider scope.

They tackled persistent bottlenecks to investment, both horizontal (e.g., linked to public procurement, State aid and Small Business Act) and sectoral (e.g., in the areas of transport, digital economy and energy) and contributed to the implementation of the Investment Plan for Europe<sup>3</sup>.

ExAC provided an incentive for Member States to implement structural changes and policy reforms, including those linked to the relevant country-specific recommendations, especially those included in 2013-2016. Many ExAC had a reform-triggering impact and a high coherence with the European Semester (e.g., the health ExAC). They addressed in some Member States delays and shortcomings in transposition of the EU acquis (e.g., in the energy, water and waste sectors), thereby improving the quality and legality of relevant investments, not only those co-financed by ESI Funds. ExAC have also supported the implementation of EU climate policies.

Many ExAC resulted in better targeting of public investment. This was thanks to improved and more strategic policy frameworks, prioritisation of projects and complementarities with other sources of funding, including with centrally managed EU funds (e.g., in the research and innovation<sup>4</sup>, transport and ICT sectors). This generated positive spill-over effects by improving the investment environment for other public support, such as the Connecting Europe Facility (CEF) and the European Fund for Strategic Investment (EFSI), as well as for private sector investment. Moreover, ExAC contributed to improving the institutional and

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<sup>1</sup> See for example OECD Recommendation on Effective Public Investment Across Levels of Government adopted on March 12, 2014.

<sup>2</sup> There are five ESI Funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

<sup>3</sup> [https://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan\\_en](https://ec.europa.eu/priorities/jobs-growth-and-investment/investment-plan_en)

<sup>4</sup> More details will be provided in the upcoming Communication on Smart Specialisation.

administrative capacity of public institutions and stimulated coordination within public administrations and vis-à-vis the relevant stakeholders.

To sum up, had it not been for ExAC, reforms and changes might not have happened or they might have happened at a much slower pace. However, a lasting positive effect of these achievements depends on the ownership by the Member States and regions in carrying out the changes kick-started by the ExAC.

This document presents the preliminary results of the impact of the ExAC mechanism, illustrated by concrete examples of measures undertaken across Member States. Beyond the clear added value it also presents some lessons learned highlighting certain areas for improvement, notably with regards to administrative burden, scope and durability of ExAC achievements that may contribute to strengthening further their impact on the effectiveness of the ESI Funds and on the delivery of EU objectives.

The document is based on the Commission Services' experience so far, on its regular contacts with Member States in connection with the implementation of the ESI Funds, as well as on the results of the study on the implementation of ExACs during the programming phase of the ESI Funds of July 2016 (hereafter 'study on ExAC')<sup>5</sup>. It also builds on the results of the ongoing study on the support of the ESI Funds to the implementation of the country-specific recommendations and to structural reforms in Member States<sup>6</sup> (hereafter 'study on CSRs').

### ***Overview of the content and state of play of fulfilment of ExAC***

There are 48 ExAC established in the legislative framework of the ESI Funds:

- 7 general ExAC, set out in the Common Provisions Regulation on the ESI Funds (CPR)<sup>7</sup>, linked to horizontal aspects of programme implementation, applicable to all ESI Funds;
- 29 thematic ExAC, established by the CPR, setting out sector-specific conditions for relevant investment areas eligible for support under cohesion policy (investment priorities) co-financed by the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF);
- 8 Fund-specific ExAC set out for the European Agricultural Fund for Rural Development (EAFRD)<sup>8</sup>, for support under rural development policy; and
- 4 Fund-specific ExAC established for the European Maritime and Fisheries Fund<sup>9</sup>.

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<sup>5</sup> Study by consortium led by Metis, for the European Commission, published on Inforegio: [http://ec.europa.eu/regional\\_policy/en/information/publications/studies/2016/the-implementation-of-the-provisions-in-relation-to-the-ex-ante-conditionalities-during-the-programming-phase-of-the-european-structural-and-investment-esi-funds](http://ec.europa.eu/regional_policy/en/information/publications/studies/2016/the-implementation-of-the-provisions-in-relation-to-the-ex-ante-conditionalities-during-the-programming-phase-of-the-european-structural-and-investment-esi-funds).

<sup>6</sup> Study by Ismeri Europa, for the European Commission: Support of ESI Funds to the implementation of the Country Specific Recommendations and to structural reforms in Member States.

<sup>7</sup> Regulation (EU) No 1303/2013, Article 19 and ANNEX XI.

<sup>8</sup> EAFRD Regulation (EU) No 1305/2013, Article 9 and Annex V (5 ExAC for rural development are shared with the following CPR thematic ExAC: 2.2 Next Generation Network Infrastructure (EAFRD 6.), 4.1 Energy efficiency (EAFRD 5.1), 4.3 Renewable energy (EAFRD 5.3), 5.1 Risk prevention and risk management (EAFRD 3.1), 6.1 Water sector – only the criterion linked to water pricing (EAFRD 5.2)).

<sup>9</sup> EMFF Regulation (EU) No 508/2014, Article 9 and Annex IV

More information on the content of the ExAC and on their classification according to their contribution to EU-level priorities is presented in tables 1 and 2 of the Annex to this document.

Around 75% of all applicable ExAC were fulfilled at the time of adoption of ESIF programmes. For the non-fulfilled ones, over 800 distinct action plans were included in the programmes<sup>10</sup>. While the Commission will be able to assess the completion of ExAC only in the second half of 2017, as of today 86% of ExAC are fulfilled.

## **B. Why are ex ante conditionalities so important?**

### **1. IMPROVING THE INVESTMENT ENVIRONMENT IN THE EU**

Many ExAC address horizontal and sector-specific barriers that hinder investment in the EU. Through their contribution to the creation of an investment-friendly environment, they help to strengthen the Single Market and to deliver the Investment Plan for Europe, thus fostering growth and jobs. This was achieved, among other things, by mobilising Member States to transpose and ameliorate application of the EU law and to improve policy frameworks which serve not only the ESI Funds but also other sources of public investment.

- *Public procurement* and *State aid* ExAC require the existence of measures for the effective application of EU public procurement law and State aid rules, including arrangements to ensure administrative capacity for implementation and application of those rules. This helps to tackle barriers to the functioning of the Single Market, through establishing, among other things, transparent procedures for the award of public procurement contracts. Similarly, an improved capacity to apply correctly State aid rules by public administrations contributes to the effective and efficient management and implementation of projects in several Member States.
- The ExAC *related to the Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA)* requires Member States to effectively apply the EIA and SEA Directives and to ensure sufficient administrative capacity of the relevant authorities. The ExAC has also resulted in the modification of national legislation in some Member States. Consequently, the regulatory framework for the environmental decision-making process has been clarified and the knowledge and skills of the authorities applying the EIA and SEA Directives have been improved.
- The *Small Business Act* ExAC requires Member States to put in place measures to reduce the time and cost involved in setting up a business, as well as the time needed to obtain licences and permits to take up and perform the specific activity of an enterprise. In addition, it requires that Member States assess and monitor the impact of national legislation on SMEs.
- *Transport-related* ExAC require that a strategic framework – compliant with the SEA Directive requirements - be in place for investments in the transport sector covering all

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<sup>10</sup> The final deadline for reporting by Member States is end June 2017 in the framework of the Annual Implementation Report for 2016 and end August 2017 in the framework of the Progress Report. The Commission assesses completion of the ExAC action plans on the basis of reporting by Member States.

modes of transport and delivering a seamless, door-to-door transport system. Member States and regions prepared national and regional comprehensive transport plans, accompanied by a mature project pipeline, and took administrative capacity measures to ensure effective implementation. Those transport plans provide a common basis for policy and investment decisions at EU, national and regional level. They ensured the coordinated use of the different forms of EU financial support, e.g. from ESI Funds, CEF and EFSI, and a more secure investment environment for public and private investors.

- The *Digital* ExAC require the existence of a strategic policy framework for digital growth, including budgeting and prioritisation of actions consistent with the Scoreboard of the Digital Agenda for Europe, as well as of Next Generation Network Infrastructure Plans in order to reach the EU high-speed Internet access targets. These ExAC thus supported the completion of the Digital Single Market for both infrastructure and services.
- The ExAC in the area of *Transport and Smart energy* require the existence of well-prioritised, realistic and mature project pipelines. This helps to speed-up and to improve project pipelines in those strategic sectors to be financed from European and national funding sources.
- The *waste* ExAC requires the adoption of key strategic tools, such as the waste management and prevention plans, which are necessary for the implementation of investments in this sector and a prerequisite of the circular economy package.

#### *Examples*

- In **Romania**, the measures put in place to fulfil the ExAC *public procurement* led to a rethink of the public procurement system and to the setting up of a consolidated legal framework for effective application of Union rules (new and upgraded legislative texts and prevention of conflict of interests measures), a reinforced institutional set-up (the creation of the National Agency for Public Procurement) and arrangements that ensure transparent contract award procedures (including upgraded and coordinated methodologies, e-procurement and web-based, more friendly-user guidance).
- In **Latvia**, public procurement was made more efficient by ensuring the functioning of the Latvian electronic procurement system, as part of the fulfilment of the ExAC *public procurement*.
- In the framework of the ExAC linked to the *Small Business Act*, three Member States – **Malta, Portugal and Slovenia** – introduced the SME Test, to ensure assessment and monitoring of the impact of national legislation on SMEs.
- In **Slovenia**, the Transport Development Strategy set out in the framework of the *Transport* ExAC is the first comprehensive national transport strategy covering all modes of transport. It identifies the main bottlenecks and sets out investment priorities in the transport sector at the national, regional and EU level.
- In Wales (**UK**), within the framework of *ExAC Transport and ExAC Railway*, the existing integrated transport strategy was updated in 2015 by adding a list of priorities for support



from ESI funds. This was particularly important for the South Wales Metro major project, the impact of which will be broadened via a range of complementary ERDF and ESF investments across the south Wales region. This update also allowed for additional EU best practice to be incorporated into the transport delivery plan, such as more emphasis on intermodal links and further consideration of the role of innovation in transport systems.

- In **Greece**, the ExAC on *Digital growth* triggered a number of key reforms: 1) creation of a General Secretariat for ICT, which was transformed into a Ministry in charge of the Next Generation Access plan, e-government and all matters linked to digital investments; 2) the adoption of a new framework for prioritising needs and actions in view of developing a mechanism for the selection, evaluation and approval of projects; and 3) the adoption of a revised digital growth strategy for the country.
- In **Poland**, a plan for a project pipeline was developed in the framework of the ExAC *Smart energy infrastructure*, which serves as a common instrument for monitoring preparation (cost-benefit analysis, environmental decision, State aid, construction permit, major project application) and implementation (tenders, start of works, date of placing in service) of investments in energy infrastructure. This also allowed a better coordination of national and EU funding sources (ESIF, CEF and EFSI).
- The ExAC on *aquaculture* helped most Member States to channel financial support to priority areas identified in their multi-annual strategic plans for the sustainable development of aquaculture, thus overcoming growth barriers in aquaculture and enhancing the general competitiveness of the sector in the EU.

## **2. SUPPORTING STRUCTURAL CHANGES AND IMPLEMENTATION OF COUNTRY-SPECIFIC RECOMMENDATIONS**

Depending on the Member State context, many ExAC under cohesion policy can be catalysts of structural changes and policy reforms, in respect of implementation of policies agreed at EU level. This was confirmed by the preliminary results of the study on CSRs. According to its early findings, despite the fact that there is no legal link between CSRs and ExAC, in several Member States, ExAC speeded up execution of reforms and provided foundations for additional reforms and new policy design. ExAC elevated the issue of reforms to a political level and hence reinforced the overall commitment to the reforms. Furthermore, the availability of ESI Funds for both planning and implementation facilitated recruitment of qualified personnel and involvement of competent external experts in the reform process.

The examples below show that the measures undertaken to fulfil ExAC addressed the persistent challenges identified in the CSRs. They facilitated reforms in strategic and policy frameworks and led to needed legislative changes. They contributed to changes in many policy areas, such as education, the labour market, health, social inclusion and non-discrimination, institutional capacity and research and innovation.

### Examples

- **Poland** achieved a better coordination of healthcare investments with the help of maps of healthcare needs, developed as part of the ExAC linked to the *Health* sector. This addressed the 2013-2014 CSRs on the cost effectiveness of spending and the overall efficiency of the healthcare sector. In addition, in the framework of ExAC *Research and innovation*, the smart specialisation strategies at national and regional level responded to another 2013-14 CSR by concentrating funds on actions which improve the transfer of results of R&D and innovation projects to the economy. As a result, the selection criteria for supporting productive investment projects for SMEs contain a systematic reference to the smart specialisation strategies, prioritizing ESI Funds investments in smart specialisation areas.
- The 2014 & 2016 CSRs for **Latvia** recommended making the research system more integrated, strengthening the links with the private sector and promoting internationally competitive research institutions. As required by the ExAC *Research and Innovation*, a smart specialisation strategy was elaborated, which contributed to structural change in the R&I sector through a reform of research institutions. It helped to focus the ESI Funds support on priority areas and to incentivise private investment in innovation.
- In **Slovenia**, in the framework of ExAC *Research and innovation*, strategic innovation partnerships were established. Their main role is to support stakeholders in the R&D and innovation process and to simplify administrative procedures. This responded to the 2016 CSR: "*Take measures to modernise public administration and reduce the administrative burden on business. Improve the governance and the performance of state-owned enterprises*".
- In **Romania**, the ExAC *Access to employment and Labour market institutions* supported structural reforms identified in the 2014-2016 CSRs by strengthening the National Employment Agency's (NEA) services, in particular by tailoring services to jobseeker profiles and better linking them with social assistance. NEA is reforming the way it delivers services to its clients: a NEA strategy has been adopted and profiling has been legislated and is already being implemented, with around 90% of NEA beneficiaries already profiled. A catalogue of services was adopted and Romania decided to integrate the national spending on active labour market policies with the ESF. The Public Employment Service's capacity to deal with specific target groups (young people not in employment, education and training, long term unemployed and inactive) will be reinforced. Case management is being introduced, which aims at better cooperation between employment and social services.
- In **Italy**, the ExAC *Other modes of Transport* induced the port reform called for in the CSR, speeding up joint development of the maritime and customs single window and merging port authorities to overcome fragmentation in the sector.
- In **Bulgaria**, the fulfilment of the ExAC on the integration of marginalised *Roma communities* triggered the development of methods for monitoring and assessing the impact of Roma integration and the implementation of the National Strategy of the Republic of Bulgaria for Roma Integration 2012-2020, with information at municipal, regional and national level being integrated into a unified information platform.

- The **Czech Republic** prepared a detailed action plan for inclusive education to fulfil the ExAC on *Early school leaving*. This addressed the repeated CSR on the need to include disadvantaged children (including Roma) in mainstream schools and also addressed the infringement procedure against the Czech Republic for racial discrimination against Roma children in education. The action plan provided for regular monitoring of the added value of preparatory classes and of the potential risk of early segregation. It also sought to identify and eliminate barriers to inclusive education. Furthermore, to fulfil the ExAC on the integration of marginalised *Roma communities*, a monitoring methodology was adopted on the inclusion of Roma in education, housing, social services, employment and health services in order to measure the impact of planned substantial ESI Funds investments in these areas. This example illustrates the contribution of ExAC to addressing weaknesses pointed out by the European Court of Auditors (ECA) in one of its special reports<sup>11</sup>.
- The 'Lifelong Learning Strategy 2020' implementation documents in **Estonia** were developed and approved in the framework of ExAC: *Early school leaving* and *Lifelong learning*, including the Schools Network Programme and the related mapping of necessary infrastructure investment needs. This helped to improve the labour market relevance of education and training systems and to reform the general education school network. It addressed the 2015 CSR: "*to increase participation in vocational education and training, and its labour market relevance, in particular by improving the availability of apprenticeships*". Furthermore, in the framework of the ExAC: *Active inclusion*, the Welfare Development Plan pursues two goals: 1) high level of employment and long, quality working life; and 2) reduction of social inequality and poverty, and gender equality. Thus, the Plan addressed CSRs for 2013-2016 on improvement of the delivery of social services.
- In **Greece**, the ExAC on *Vocational Education and Training* (VET) supports the expansion of apprenticeships. The VET national strategy that was adopted as a result provided a framework for developing an integrated approach that brings together key actors and stakeholders of various vocational and education sub-systems. The strategy includes fundamental strategic guidelines for upgrading and expanding apprenticeships to Vocational Lyceums, focusing on the provision of quality placements and outcomes.
- In **Italy**, the ExAC on the *Active Inclusion* supported the national reform identified by the CSR 2016, namely the adoption and implementation of a national anti-poverty strategy. The 2016 National Stability Law created a Fund aimed at supporting the National plan against poverty, with a budget of €600 million in 2016 and of €1,000 million in 2017. Another building block of this strategic framework has been the adoption of guidelines for support to the homeless, which constitute the standards for intervention by social services and use of ESF and FEAD (Fund for the European Aid to the Most-Deprived).
- In **Lithuania**, in fulfilment of the ExAC on *Vocational Education and Training* (VET), a VET development action plan was developed which emphasised, among other things, work-based learning. Several measures in the plan are designed to promote high quality VET services by taking into account the 10 quality indicators of the EQAVET recommendation and by monitoring outcomes in terms of employability and transition of

<sup>11</sup> ECA Special report No 14/2016 EU policy initiatives and financial support for Roma integration: significant progress made over the last decade, but additional efforts needed on the ground.

graduates.

- In **Croatia, Bulgaria and Romania**, health maps developed to fulfil the ExAC linked to the *Health* sector addressed different CSRs on cost effectiveness of spending, accessibility and the overall efficiency of the healthcare sector. For the first time in Romania, the national strategic policy framework for health is based on a strategy to shift resources from hospital-based care towards preventive and primary care (CSR 2016).

### 3. ACCELERATING THE TRANSPOSITION AND IMPLEMENTATION OF THE EU ACQUIS

Several ExAC are linked to the transposition and implementation of the EU legislation and rules. The compliance of projects co-financed by the ESI Funds with the EU acquis is a prerequisite for ensuring their quality and consistency with EU policies.

Such ExAC also benefit projects that are procured without the ESI Funds support.

- With regard to ExAC for *public procurement, State aid, environmental legislation relating to Strategic Environmental Assessment (SEA) and the Environmental Impact Assessment (EIA), non-discrimination, gender and disability*, several Member States improved the implementation of EU rules in a systemic manner, for example by modifying their legislation or by addressing the practical aspects of their application of the relevant EU rules on the ground. This included ensuring the necessary administrative capacity for application of such rules.
- Several Member States were mobilised to complete the transposition of the EU acquis in the *energy efficiency and renewable energy sectors*, which resulted in a thorough realignment of the public policies of these Member States with EU law and policy. For example, the requirement to adopt a renewable energy action plan consistent with EU law contributed to addressing weaknesses in planning of these investments, as signalled by the ECA in its special report<sup>12</sup>.
- ExAC relating to the *water and waste sectors* provided impetus in many Member States to properly transpose and implement the relevant EU legislation. The *water sector* ExAC has proved so far to be a very useful tool in closing the relevant implementation gaps identified in the first River Basin Management Plans. It has been a driver for many Member States to implement improvements in areas such as pricing policies and to adopt the second generation of River Basin Management Plans. The *waste sector* ExAC required the existence of waste management and prevention plans, as well as adequate economic instruments, with a view to guaranteeing the long-term sustainability of investments in the waste sector. The existence of such plans will ensure the application of the waste hierarchy principle, prioritising prevention, re-use, recycling and recovery.
- The EMFF-specific ExAC concerning *fisheries control, inspection and enforcement* encouraged Member States to put in place and apply national systems for sanctioning serious infringements. This resulted in better monitoring of compliance with the rules of

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<sup>12</sup> ECA Special report No 6/2014 Cohesion policy funds support to renewable energy generation — has it achieved good results?

fisheries by individual fishermen, which should lead to a better balance between fishing effort and available biological resources.

### *Examples*

- In **Italy**, shortcomings in the transposition of the *public procurement* acquis led in the past to several suspensions of payments from the EU Funds. The ExAC *public procurement* speeded up the process of correcting the relevant national legislation and ensuring that the relevant regional and national authorities are well prepared to implement the revised public procurement rules.
- In the **Czech Republic** in the framework of the general ExAC on *State aid*, the authorities ensured that the central *de minimis* registry is included among the external support systems for monitoring of ESI Funds, providing a check of the overall *de minimis* aid level and ensuring that *de minimis* aid granted under ESI Funds is recorded in the central *de minimis* registry. In **Slovakia**, the legislative framework for the establishment of a central register for State aid covering individual aid and aid subject to the GBER as well as *de minimis* aid has been set up by the new State Aid Act. The Act introduces obligations for State aid granting authorities concerning recording data on aid provided and on aid beneficiaries in the central register (to ensure that Slovakia fulfils EC requirements in the field of transparency), as well as penalties for not meeting these obligations. The data is available on a publicly accessible website.
- In the **Czech Republic, Italy, Poland, Portugal, Slovenia** and **Spain**, the need for fulfilment of the *energy efficiency* ExAC gave a significant push to swift transposition of the Energy Efficiency and Buildings Directives.
- In several Member States, such as **Cyprus, Italy** and **Spain**, the ExAC for the *waste sector* has accelerated the adoption of the relevant regional waste management plans in line with the Waste Framework Directive.
- In the **Czech Republic** and **Slovakia**, the *water sector* ExAC led to the preparation and timely adoption of the second cycle River Basin Management Plans. In the framework of this ExAC, additional actions were completed, such as the modification of the pricing policy amendments and the preparation of technical guidance documents.
- The ExAC for the *water sector* has triggered amendments of the water pricing policies to the agricultural sector that should provide incentives to farmers to use water resources efficiently. **Bulgaria, Cyprus, Hungary, Italy, Malta and Slovakia** have amended their legal framework as a result of this ExAC.
- In several Member States, for instance in **Finland** and **France**, the EMFF-specific ExAC on *control* accelerated the adoption and/or modification of national legislation in the area of fisheries control systems. New frameworks for serious infringements including IT monitoring systems were set up that support compliance with EU control rules and improved management of fish stocks.



#### 4. BETTER TARGETING OF SUPPORT FROM ESI FUNDS AND FROM OTHER PUBLIC FUNDING

Many ExAC required that support from the ESI Funds should form part of policy or strategic frameworks which meet certain quality criteria. A number of ExAC required prioritisation of investments based on a needs analysis. Such frameworks had to encompass national and regional public investments. Some ExAC required strategic policy documents to ensure that funding is targeted to the people most in need of support and to tackle identified challenges, for example in the labour market. As a result, the selection criteria and calls for projects to be co-financed by ESI Funds are better tailored to the socio-economic context at the European, national and regional level. This should lead to better effectiveness and efficiency of the EU support, as well as of the other public funding in Member States. In particular, the following types of benefits were identified:

- Better quality of national and regional policy and strategic frameworks (achieved, for example, through the entrepreneurial discovery process required for setting-up smart specialisation strategies under ExAC *Research & Innovation*, or the involvement of stakeholders under ExAC *Access to employment, Youth Employment Initiative and Active inclusion*) contribute to smarter public spending;
- Better coordination of investments at EU, national and regional level (for example, linked to the requirements for comprehensive transport plans under ExAC *Transport*) was beneficial not only for ESI Funds but also for the CEF and EFSI. Also the *Digital growth* ExAC ensured optimal planning of ESI Funds investments in e-services, thus contributing to addressing the recommendations set out in the relevant ECA's special report<sup>13</sup>;
- Improved prioritisation of investments (for example, through comprehensive plans describing national energy infrastructure priorities in the framework of the ExAC *Smart energy infrastructure* or by means of the establishment of a multiannual national strategic plan on *aquaculture* under the ExAC *Aquaculture* or through comprehensive transport plans including investments in maritime transport under ExAC *Transport and Other modes of transport* addressing, among other things, the recommendations of the ECA in the area of maritime transport<sup>14</sup>).
- Accelerated prioritisation of investments through requirements for risk assessments and climate adaptation strategies linked to ExAC *Risk prevention and risk assessment*. Those requirements contributed positively to implementation of prevention measures under the Union Civil Protection Mechanism and the EU adaptation strategy;
- Improved links between public and private investments (for example, through measures to stimulate private investment in the Next Generation Network (NGN) infrastructure under the *NGN Infrastructure/Broadband* ExAC and through measures to stimulate private RTD investments under the *Research and Innovation* ExAC);

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<sup>13</sup> ECA Special report No 24/2014 Has ERDF support to SMEs in the area of e-commerce been effective?

<sup>14</sup> ECA Special report No 23/2016 Maritime transport in the EU: in troubled waters — much ineffective and unsustainable investment.

- Strengthening of monitoring mechanisms for strategies and policy frameworks (for example, the requirement for a monitoring and review system for strategic policy frameworks in the *health* sector, or for addressing *early school leaving*, *Roma integration* developed in the framework of the ExAC addressing those areas, or through the updated River Basin Management Plans and Waste Management Plans linked to *water sector and waste sector* ExAC).

#### *Examples*

- In **Portugal**, the adoption of the smart specialisation strategy under ExAC *Research and innovation* helped to focus public funding in R&I on a limited number of smart specialisation areas. In **Spain**, as a result of the same ExAC, regions previously lacking experience in this area developed expertise and presented smart specialisation strategies of high quality. In a number of Member States, for example in **Italy, Lithuania, Malta, the Netherlands** and **Poland**, the mechanisms for monitoring of investments in research, technological development and innovation were improved in the framework of this ExAC.
- In Mecklenburg-Vorpommern (**Germany**), the requirements under the ExAC *Research and Innovation* gave the region an impetus to develop further the existing innovation strategy with an involvement of relevant academic and economic actors. As a result of this process, the regional smart specialisation strategy identified priority fields for investment, based on a SWOT-analysis.
- **Italy** has recently improved its relative position but still lags behind many of the other Member States in fast broadband (at least 30Mbps) coverage, with 72% of households covered, compared with an EU average of 76% and leading EU countries reaching close to 100%. Through ExAC *NGN Infrastructure/Broadband*, Italy increased the involvement of the central government to resolve the lack of expertise and improved its strategic vision with the development of an ambitious national broadband strategy which greatly improved coordination of all broadband investments of EU, national and regional importance. In addition, ExAC *Digital growth/ICT development* gave an impetus to addressing persistent issues with interoperability of e-services across the Italian regions. The National Strategy for Digital Agenda has for the first time defined a national catalogue of e-services and ensured development of the necessary guidance and provision of technical support to regions.
- For **Malta**, in the framework of the *Transport* ExAC and *Other modes of transport* ExAC, the policy framework for the transport sector, including maritime transport, was improved, taking into account both public and private transport modes and ensuring prioritisation of investments.
- In **Lithuania**, in the framework of ExAC linked to the *transport* sector, better coordination of investments has been achieved. The *Rail Baltica* project is planned to be co-financed from the CEF, while investments to increase technical capacity and traffic safety for the group of activities dedicated to the *Via Baltica* project are planned to be co-financed by the CF. At regional level, improved rail transport safety measures will be implemented by installing noise suppression walls and eliminating grade level crossings.
- In **Poland**, adoption of national and regional transport plans to meet the requirements of the *Transport* ExAC contributed both to the identification of a mature project pipeline and to a better prioritisation of investments, from which the CEF has also significantly

benefited.

- The *ExAC Research and Innovation* requires that support from ESI Funds is implemented through a policy mix including measures leveraging private RDI investments. As a result, in **Poland**, the support for projects in R&I co-financed by ESI Funds ensures the leverage effect to attract private capital through the private firms' own contribution.
- In **Romania**, in the context of the *Youth Employment Initiative ExAC*, a national approach aiming at outreaching to non-registered NEETs (young people not in employment, education or training) encouraged the National Employment Agency (NEA) to deal with this group so as to offer them a youth guarantee. Furthermore in **Cyprus**, in the framework of this ExAC, a National Action Plan for Youth was approved which includes implementation of the youth guarantee. The National Action Plan combines short- and medium-term actions to increase employment of young people (15-29) and to combat unemployment in the same age group.
- As a result of the *early school leaving ExAC*, **Hungary** and **Latvia** implemented systemic improvements in the national early school-leaving data collection and analysis system. In particular, the IT system functionality was extended, and legislative amendments, obliging schools and municipalities to collect data on early school leavers, were adopted.
- In **Slovenia**, the *risk prevention and risk management ExAC* led to the preparation and timely adoption of the National Adaptation Strategy (NAS), while **Croatia** and **Latvia** were incentivised to accelerate their preparation of NAS. Furthermore, in **the Czech Republic**, the national adaptation action plan has been developed, leading to prioritisation of investments.
- The EMFF-specific ExAC on the *fleet capacity* report resulted in the refining of national rules for the management of fishing fleets and facilitated the assessment of the balance between fleet segments and the resources upon which they depend. While in **Belgium** investments for conservation purposes will be increased significantly, in **Slovenia** it will now be possible to de-register vessels not fulfilling required criteria and delete them from the national fleet register.

## 5. IMPROVING ADMINISTRATIVE CAPACITY AND COORDINATION

Insufficient capacity and efficiency of public administrations in some Member States and regions have a negative impact on the implementation of the ESI Funds. It also negatively affects their competitiveness.

The ExAC *institutional capacity and efficient public administration* requires the development and implementation of a strategy to reinforce and reform administrations.

Several other ExACs establish requirements which reinforce administrative capacity to implement EU rules on public procurement, State aid, environmental legislation relating to EIA and SEA, or EU law and policy on anti-discrimination, gender equality and disability.



The very process of assessing and fulfilling ExAC resulted in improved coordination between national and regional authorities in the Member States<sup>15</sup>, improving the communication flow among ministries, agencies, regional and local level government and other stakeholders. Some ExACs contributed to improving the partnership among different governance levels for designing projects and strategies (e.g., the entrepreneurial discovery process for ExAC *Research and innovation*; the *water sector* ExAC raised awareness of other ministries of water policy requirements).

The process linked to planning and assessing ExAC also contributed to an improved understanding in the Commission Services of the situation on the ground in Member States and regions.

#### *Examples*

- **Estonia:** In the framework of the ExAC on *Institutional capacity and efficient public administration*, the OECD Public governance review action plan was revised and a quality management system was introduced with a view to enhancing efficiency, effectiveness and flexibility of management. Development of administrative capacity of the staff and of organisations (management systems, processes and structures) was prioritised. The OECD action plan serves as a basis for the on-going State Reform.
- **Bulgaria:** The action plan for the implementation, maintenance and development of modern Quality Management Systems (QMS), developed in the framework of the ExAC on *Institutional capacity and efficient public administration*, accelerated the establishment of a Common Assessment Framework (CAF) in 48 administrations by the end of 2018. CAF is envisaged to be implemented in at least 80 administrations by the end of 2020, while the total targeted number of administrations to implement QMS by the end of 2020 is 350. In addition, the ExAC gave an important boost to the preparation of an analysis of existing needs for training of civil servants and of a methodology for analysis of the training needs in the public administration.
- **Czech Republic:** The requirement of the ExAC on *Institutional capacity and efficient public administration* accelerated and guided activities to prepare a strategic framework for reinforcing administrative efficiency, including public administration reform. This framework follows up the actions implemented in the context of the Smart Administration Strategy 2007-15. The Strategic Framework for Public Administration Development in 2014-20 was adopted in July 2014.
- In the framework of ExAC on Institutional capacity, **Portugal** has designed a new vocational training system as part of the government plan for the modernisation of the public administration. The training system includes strategic orientations for vocational training in the public administration, as well as more efficient monitoring and evaluation mechanisms.
- In the framework of the ExAC on *Public procurement*, the administrative capacity of central public procurement bodies was strengthened in **Romania, Slovakia, Hungary, Czech Republic and Bulgaria**. Extensive and targeted training programmes were set up in **Greece, Italy and Romania** for national and regional administrations, which are

<sup>15</sup> The study on ExAC, page 16. See: footnote 7.

currently being rolled out. The Commission supported two pilot projects in **Slovakia** and **Bulgaria**. The OECD also helped both countries in developing a tailor-made training strategy for officials on public procurement through implementation of pilot training courses.

- As part of the fulfilment of the ExAC on *anti-discrimination*, **Hungary** has put in place a training programme including a mandatory module on non-discrimination for people involved in the implementation of the programme. An electronic training and examination system has been also developed to make the training programme widely available.
- **France**: In the Region Île-de-France, in the framework of ExAC *Statistical systems and result indicators*, local actors were actively involved in the preparation of Integrated Territorial Investments. In Auvergne, in the framework of the ExAC *Research and innovation*, local actors participated for the first time in the preparation of a regional strategy, and local businesses were heavily involved. In Guyane, the fulfilment of ExAC *Research and innovation* allowed to identify and involve actors and networks that would not have been involved in preparation of the smart specialisation strategy had the ExAC not existed.
- In **Spain** and **Portugal**, the EMFF-specific ExAC on *administrative capacity for data collection* helped to improve data availability and reliability. In addition to the recruitment of new staff, Spain carried out a major overhaul of its IT system to manage fisheries data and Portugal put new quality control processes in place.

## C. Lessons learned

The study on ExAC concludes that ex ante conditionalities "*mostly add value and will result in a more effective and structured deployment of ESI Funds*<sup>16</sup>". Overall, ExAC have proved to be an important incentive for Member States and regions to carry out reforms: "*ExAC triggered changes at national and regional level, which would not have been put in place or would have happened at a slower rate*<sup>17</sup>". This is also confirmed by the early findings of the study on CSRs.

However, the relatively short time span since they were introduced does not allow to assess fully the impact of this new mechanism. On the basis of the experience gathered by the Commission Services so far and taking into account the findings of the study on ExAC and the study on CSRs, avenues for making ExAC more effective could be explored, while simplifying at the same time the procedures linked to the ExAC mechanism.

### *Complexity of the ExAC process*

Both the study on ExAC and the study on CSRs identified that one of the main shortcomings of the current mechanism is its complexity. The study on ExAC refers to the high level of time and effort needed for the assessment of fulfilment of ExAC which requires important resources, particularly in those Member States with a large number of investment priorities and thematic objectives in relation to allocated resources<sup>18</sup>. It also underlined that some ExAC criteria<sup>19</sup> were difficult to fulfil for national/regional authorities<sup>20</sup>. Finally, the study on CSRs pointed out that the assessment at both Partnership Agreement and programme level could create duplications and inconsistencies<sup>21</sup>.

The criteria for assessing the fulfilment of ExAC are defined in detail in the CPR<sup>22</sup>. While a fixed framework ensures a consistent approach across Member States and regions, it also introduces a certain degree of rigidity and different national and regional contexts cannot thus be reflected.

Furthermore, in some cases, the difficulty in involving stakeholders in the ExAC process within the required timeframe is mentioned in the study on CSRs.

The experience also shows that ExAC require a careful design, appropriate and realistic assessment criteria, as well as an adequate follow-up and technical support for their fulfilment.

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<sup>16</sup> The study on ExAC, 8.4, last sentence, page 122.

<sup>17</sup> The study on ExAC, 8.3, page 121.

<sup>18</sup> The study on ExAC, 7.1, page 112.

<sup>19</sup> The highest number of partially and fully unfulfilled ExAC at programme adoption concerned innovation and research, statistical systems, transport, as well as waste and water sectors.

<sup>20</sup> It was signalled as particularly difficult to fulfil (i) establishment of monitoring and review systems for smart specialisation strategies or Roma inclusion strategies, (ii) developing and implementing the strategic documents for the water and waste sectors, and (iii) preparing a realistic and mature pipeline of projects in the transport sector.

<sup>21</sup> The study on ExAC, 8.2, 1st sentence, page 117.

<sup>22</sup> See footnote 5 for reference.

### ***Scope of ExAC***

The Commission tried to limit the scope of ExAC in the current period to the necessary prerequisites for the effective and efficient use of the ESI Funds, in line with the principle of proportionality. However, some Member States expressed a view that the proportionality principle was not applied effectively<sup>23</sup>. In addition, a few Member States believe that the mechanism would have been more efficient if it had focused on a limited number of ExAC<sup>24</sup>.

Finally, some areas or types of support (such as European Territorial Cooperation) have been excluded from ExAC.

### ***Ensuring fulfilment and durability of ExAC achievements throughout the implementation period***

The current assessment process is a one-off exercise. This means that, for example, when a new investment priority is introduced in a programme because a new challenge was identified in the framework of the European Semester, the relevant ExAC would not be applicable.

Furthermore, the system does not foresee mid-term or ex-post evaluations of the completion of ExAC to ensure that it remains fulfilled after completion of the action plan.

The current rules do not allow to monitor or check application on the ground. Therefore, there is a risk that measures taken to fulfil the ExAC could be reversed. Experience from implementation to date shows that the value added of ExAC relies on the Member States and regions' ownership of the deliverables achieved through ExAC. The measures and tools developed to fulfil ExAC need to be implemented throughout the implementation of the programmes. For example, the strategic documents should be reflected in the selection criteria for projects and training schemes for the staff of public administrations should be carried out as planned.

According to the preliminary conclusions of the study on CSRs, some Member States pointed out that the positive effects of ExAC may be undermined by lack of appropriate administrative and institutional capacity and insufficient involvement the relevant stakeholders.

### ***Implementation of programmes prior to fulfilment of ExAC***

Under the current rules, when an ExAC was not fulfilled at the time of programme adoption, the Member State had to fulfil it in line with an agreed action plan by end 2016. However, implementation of programmes, in particular the activities linked to project preparation, could be launched and payment claims could be submitted to the Commission before the ExAC were fulfilled.

The Commission may only suspend interim payments either at the time of programme adoption in case of significant prejudice to the effectiveness and efficiency of specific objectives or in case of failure to complete action plans by end-2016. Thus, there is a period when the ExAC is not fulfilled but when an investment can still proceed, i.e., 3 years from the start of eligibility of expenditure.

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<sup>23</sup> The study on ExAC, 8.4, 3rd paragraph, page 122.

<sup>24</sup> The study on ExAC, 7.1, 6th paragraph, page 112.

It would be useful to reflect upon any positive incentives, apart from suspension of payments, in view of fostering reforms needed for effective implementation of programmes co-financed by the EU funds.

The Commission has been closely monitoring the fulfilment of ExAC and has provided support to Member States to complete the action plans, including through technical assistance. It is to be considered how to make this process more effective in view of timely fulfilment of ExAC.

## **D. Conclusions**

The relatively short timeframe of ExAC implementation has not allowed to fully assess their effectiveness and provide sufficient evidence. However, on the basis of a preliminary assessment of the ExAC mechanism, ExAC brought added value for the EU, Member States and regions, and for citizens and businesses operating in the EU. They have contributed to improving the framework within which the EU budget operates.

They ensured a direct link between the investments co-financed by the ESI Funds and EU level policies. They contributed to the transposition and implementation of the relevant Union legislation, helped to tackle barriers to investment in the EU and supported climate change policy objectives.

ExAC have triggered strategic, regulatory and institutional and administrative changes. They have also triggered policy reforms and delivery on relevant country-specific recommendations at national and regional level that should lead to more effective and efficient spending of the ESI Funds.

These benefits are not limited to the ESI Funds, but have a positive impact on the delivery of structural changes and on improving the investment environment in the EU.

Had it not been for ExAC, these changes and reforms might not have happened in some Member States or might have happened at a much slower pace.

The experience gained so far also shows that there are areas for improvement of the ExAC approach in view of reducing the complexity of the ExAC process and the administrative burden. With a number of Member States not having finalised their action plans, the Commission may decide to suspend payments in line with the legal framework. In this respect, there is a need to make ExACs more manageable and more flexible in the post-2020 period, taking into account national and regional contexts where possible, as well as improving the scope of ExAC with a focus on, possibly, a limited number of ExAC. To ensure a stable link between investments and policy objectives expressed in the ExAC, the durability of results achieved via their fulfilment needs to be strengthened.

## ANNEX

**TABLE 1: OVERVIEW OF THE CONTENT OF THE THEMATIC/SPECIFIC AND GENERAL EX ANTE CONDITIONALITIES**

ExAC	Summary of content
<i>Policy and strategic frameworks</i>	
R&I	Smart specialisation strategy
R&I infrastructure	Multiannual plan for budgeting and prioritisation of investments
Digital growth/ICT development	Strategic policy framework for digital growth
NGN Infrastructure/Broadband	Next generation network plan
Risk prevention and risk management	National/regional risk assessment
Transport	Comprehensive transport strategy
Smart energy infrastructure	Comprehensive plans for energy in line with energy directives
Active labour market policies/access to employment	Active labour market policies are designed and delivered in the light of the Employment guidelines
Self-employment	Strategic policy framework for inclusive start-ups
Modernisation of labour market institutions	Labour market institutions are modernised and strengthened in the light of the Employment guidelines
Active and healthy ageing	Active ageing policies are designed in the light of the Employment guidelines
Adaptation of workers, enterprises and entrepreneurs to change	Policies aimed at favouring anticipation and management of change and restructuring
Promoting youth employment	Strategic policy framework for promoting youth employment
Poverty reduction/active inclusion	Strategic policy framework for poverty reduction
Roma inclusion	National Roma inclusion strategic framework

Health	Strategic policy framework for health
Reducing early school leaving	Strategic policy framework to reduce early school leaving
Higher education	Strategic policy framework for increasing tertiary education attainment, quality and efficiency
Lifelong learning	Strategic policy framework for lifelong learning
VET systems	Strategic policy framework for increasing the quality and efficiency of VET systems
Administrative efficiency and public administration reform	Strategic policy framework for reinforcing a Member States' administrative efficiency
Fishing fleet (EMFF)	Report on fishing capacity has been submitted in accordance with Regulation 1380/2013
Aquaculture (EMFF)	The establishment of a multiannual national strategic plan on aquaculture
<i>Regulatory frameworks</i>	
Energy efficiency	Cost-effective investment in energy efficiency when constructing or renovating buildings
Cogeneration	Promotion of high-efficiency co-generation of heat and power
Renewable energy	Promotion of production and distribution of renewable energy sources
Water sector	An adequate (a) water pricing policy and (b) river basin management plan
Waste sector	Implementation report, waste management and prevention plans, recycling targets.
Good Agricultural and Environmental Conditions (EAFRD)	GAEC standards are defined in national law and specified in the programmes
Minimum requirements for fertilisers and plant protection products (EAFRD)	Minimum requirements for fertilisers and plant protection products are specified in the programmes
Other relevant standards (EAFRD)	Relevant mandatory national standards are specified in the programmes (to define the baseline for agri-environment-climate payments)
Public procurement	Arrangements for effective application of EU public procurement law in the projects co-financed by ESIF

State aid	Arrangements to prevent granting of illegal state aid are put in place
Environmental legislation: EIA/SEA	Arrangements for effective application of EU legislation on environmental and strategic impact assessment
<i>Institutional and administrative capacity</i>	
SME/SBA	Specific actions to underpin the promotion of entrepreneurship
Administrative efficiency and public administration reform	Strategic policy framework for reinforcing a Member States' administrative efficiency
Administrative Capacity data collection (EMFF)	Administrative capacity is available to comply with the data requirements for fisheries management
Administrative Capacity control (EMFF)	Administrative capacity is available to comply with the implementation of a union control, inspection and enforcement system
Anti-discrimination (EMFF)	Administrative capacity to implement and apply Union anti-discrimination law and policy in the field of ESIF
Gender	Administrative capacity to implement and apply Union gender equality law and policy in the field of ESIF
Disability	Administrative capacity to implement and apply the UNCRDP in the field of ESIF
Public procurement	Administrative capacity to apply Union public procurement law in the field of ESIF
State aid	Administrative capacity to apply Union State aid rules in the field of ESIF
Gen. Environmental legislation: EIA/SEA	Administrative capacity to apply Union environmental legislation in the field of ESIF
Statistical systems and result indicators	Statistical basis necessary to undertake evaluations. System of result indicators.



**TABLE 2: CONTRIBUTION OF EX ANTE CONDITIONALITIES TO EU LEVEL PRIORITIES**

EU priorities	Ex ante conditionalities
Jobs, Growth & Investment	R&I, R&I infrastructure, Digital growth, Next Generation Network Infrastructure, SME/SBA, Water sector, Waste sector, Transport, Railway, Other modes of transport, Active labour market policies/access to employment, Self-employment and entrepreneurship, Labour market institutions, Active and healthy ageing, Adaptation of workers, enterprises and entrepreneurs to change, Promoting youth employment, Reducing early school leaving, Higher education, Lifelong learning, VET systems, Institutional capacity and efficient public administration, EIA/SEA legislation, Aquaculture (EMFF).
Digital Single Market	Digital growth, Next Generation Access.
Energy Union and Climate	Energy efficiency, Cogeneration, Renewable energy, Risk prevention and risk management, Smart energy distribution.
Internal Market	Research and innovation, Transport, Railway, Other modes of transport, Public procurement, State aid.
(Fairer) Economic and Monetary Union	Poverty reduction/active inclusion, Roma inclusion.
Justice and Fundamental Rights	Institutional capacity and efficient public administration, Anti-discrimination, Gender, Disability.
Migration	Poverty reduction/active inclusion.
Better Regulation	SME/SBA, Institutional capacity and efficient public administration.
Sustainable Development Goals	Water sector, Waste sector, EIA/SEA legislation, Good Agricultural and Environmental Conditions (EAFRD), Minimum requirements for fertilisers and plant protection products (EAFRD), Other relevant standards (EAFRD), Report on fishing fleet (EMFF), Administrative capacity data collection (EMFF), Administrative

	capacity control (EMFF).
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