University of Finance, Business and Entrepreneurship

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"Financial Implications and Effectiveness of National Audit Authorities' Tasks in the Framework of the European Union's Cohesion Policy"

Summary

By

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Introduction

Introductory remarks

The European Union's Cohesion Policy is one of the most dynamic policy fields within the European integration process. The budget for this policy field has developed steadily and accounts for more than one third of appropriations for the current multiannual financial framework. However, Cohesion Policy has grown in importance, not just in financial terms but also qualitatively, as it has developed from a simple transfer mechanism into a complex and content-rich field with considerable steering effect. Cohesion Policy is now the EU's main financial tool for achieving its long-term strategic goals (e.g. the Europe 2020 goals).[1]

In order to achieve Cohesion Policy's objectives and to ensure high impact for limited funds, a proper and effective management and control system is vital. For the 2007-2013 programming period, a formal three-level control structure was introduced at national level for the first time, with the audit authority (AA) as the first "independent" audit layer. Before the 2007-2013 programming period, a so-called "control body" was in charge of *ex-post* checks.[2]

In principle, the audit authorities are a further development of the so-called control bodies, which, until the 2000-2006 programming period, were merely in charge of *ex-post* checks.[3][4] Compared to these bodies, however, audit authorities are more independent and have a much broader and more robust mandate. Together with other structural reforms, the formalisation of the internal control structure with a clear separation of functions and greater independence for management and control bodies is regarded as a material contribution towards a more robust governance system in relation to the audit of Cohesion expenditure.[5]

Research object and subject

The research object are the incorporation of the national audit authorities in the management and control system of the EU Cohesion Policy including the task entrusted to them and the legal framework determining their work.

The research subject of the study in the dissertation are the functions and responsibilities of the national audit authorities in the framework of the EU's Cohesion Policy and its effects on the assurance level of the EU spending in this area. More precise, the analysis elaborates the developments of the tasks entrusted to the audit authorities and comparatively analyses them between 2007-2013, the 2014-2020 and the post 2020 programming periods and links this results with the development of the irregular spending. The time span 2007-2026 (three programming periods) constitute the limitations of the research.

The purpose of the dissertation thesis is to study the effectiveness of the AAs' work on the overall assurance level of the EU Cohesion Policy. The main objective of the dissertation is conclude on whether the evolution of the responsibilities of the audit authorities contributed towards a more robust management and control system for the delivery of Cohesion Policy funds resulting in less funds spend ineligible. Furthermore, the dissertation assesses if the development of the responsibilities has been synchronised with the audit authorities' professionalism toward the effectiveness of their audit work (measured e.g. based on error rates reported by the European Court of Auditors).

1 (Karakatsanis G., Weber M., 2016, p. 183)
2 (Weber, M.; Latopoulou, C.; Guevara-López, J., 2014, p. 41)
3 See Articles 10 and 15 of Commission Regulation (EC) No 438/2001, (European Commission, 2001)
4 (European Commission, 2001)
5 (Weber, M.; Latopoulou, C.; Guevara-López, J., 2014, p. 41); (Karakatsanis G., Weber M., 2016, pp. 172-174)

Hypothesis and scientific approach

The preliminary study of this field indicates that the introduction of the AAs has been a milestone in making the management and control system of the EU's budget implementation more robust. Thus contributing to protect the EU budget from ineligible spending. Against that backdrop, the study aims to adopt or reject the following hypothesis:

The national audit authorities play an important role in the management and control framework of the EU Cohesion Policy. Its responsibilities are manifold and have developed over the programming periods. The responsibilities of the national audit authorities have been increased and become more complex over the programming periods and led to an increased assurance level for the eligibility of Cohesion Policy funds.

- Sub-Hypothesis 1 — There is a tendency to weaken the management and control system by simplification measures, which leads to audit and assurance gaps.

For reaching the objective of this dissertation and answering the hypothesis, the study combines a variety of research methods to achieve the defined objective like "comparative research method", "concretization" and "specialization", "abstraction", "induction" and "generalization", "observational study", "descriptive statistical approach", "predictive analysis", "analysis", and synthesis

Chapter 1 The theoretical and conceptual framework of Cohesion Policy, with a special focus on governance arrangements

1.1 Understanding Cohesion Policy

1.1.1 Definition

This paper deals with the EU's Cohesion Policy as defined by the Treaty on the Functioning of the European Union (TFEU)[6]. From Article 174 TFEU follows that Cohesion is a discrete policy field that cannot be limited to specific areas. It is a cross-cutting issue affecting different sectors and domains. As such, Cohesion Policy is one of the EU's most important policies, as it reflects the main values, objectives and fundamental principles of the Union.[7][8] Cohesion Policy interventions contribute to the attainment of several of the European Commission's priorities like "Jobs, Growth and Investment," and is regard as the most important EU investment instrument for the delivery of the Europe 2020 objectives supporting growth and job creation at EU level and structural reforms at national level.[9]

Together with its cross-cutting nature, EU Cohesion Policy can be defined as a "meta-governance" tool for horizontal policy coordination and integration, and involves all levels of government – from EU to local – alongside stakeholders from the private and third sectors in multi-level governance partnerships.[10]

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6 (European Union, 2012b)

7 Unless otherwise stated, the words 'Community', 'Union', and 'European Union' are used synonymously.

8 For example, Article 2 of the Treaty of the European Union (TEU) stipulates the values the EU is founded on, such as solidarity. Article 3 TEU gave the main objectives of the EU as promoting the well-being of its people or promoting economic, social and territorial cohesion, and solidarity between Member States (European Union, 2012a)

9 (European Commission, 2019d, p. 30)

10 (Bachtler, J., Mendez, C., Wishlade, F., 2013, pp. 11-12); An overview of the different stakeholders and institutions of Cohesion Policy is provided by (Stephenson, 2016) or (Damen-Koedijk, 2016, pp. 89-159)

Cohesion Policy objectives are mainly implemented through the European Regional Development Fund (ERDF), the Cohesion Fund (CF), the European Social Fund (ESF).[11]

1.1.2 Evolution of Cohesion Policy

European Cohesion Policy has developed in a particularly dynamic way during the process of the European integration.[12] From the outset of the integration process, there were tremendous economic and social disparities across EU[13] states and regions, and so Cohesion Policy was one of the policy fields on which particular emphasis was placed.[14] In order to address the issue of regional imbalances, the Treaty of Rome set up the European Social Fund and the European Agricultural Guidance and Guarantee Fund (EAGGF) as intervention measures (separate from EIB loans). The first EU enlargement in 1973 saw the establishment of the European Regional Development Fund. In 1992, the Maastricht Treaty[15] created the Cohesion Fund as a further structural instrument.[16]

During the 1970s and 1980s, several reforms took place. In this regard, one of the most significant milestones for a fully-fledged Cohesion Policy was the landmark reforms of 1988[17], the principles of which still govern EU Cohesion Policy today. With the reforms, coordinated and integrated use of the three structural funds (the ERDF, the ESF and the EAGGF), which until then had been predominantly separate, was enforced. In order to ensure the closest possible link between the use of the Union's structural instruments and the Member States' support measures, a four-level programming procedure was introduced, as was the partnership principle.

A further milestone for Cohesion Policy was the 2007 reform.[18] This was important for two main reasons. Firstly, the allocation of funds between Member States changed fundamentally, as it did with the enlargements of 2004 and 2006, when the entry of 12 new Member States saw the economic development gap widen significantly. Secondly, the Lisbon Treaty[19] linked Cohesion Policy to the EU's strategic objectives.[20]

Taken account of the problems identified in the past (e.g. inefficient absorption; insufficient focus on results; weaknesses and failings in management and control systems) the framework for the current 2014-2020 programming period has further developed e.g. by introducing a concentration on certain thematic objectives, by introduction of *ex-ante* conditionalities, and by a more suffistocated performance measurement framework.[21]

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11 (European Court of Auditors, 2018a, p. 204)

12 A detailed overview of the development of EU Cohesion Policy is provided by (Brunazzo, 2016) and (Bachtler, J., Mendez, C., Wishlade, F., 2013, pp. 13-58)

13 Although the European Union (EU) was officially founded by the Treaty of Maastricht (European Union, 1992), the term EU is also used for its predecessor entities (the European Communities)

14 It should be stressed that the EU's predecessors did not possess the same powers in this area as the EU does today. The delivery mechanism was also less sophisticated

15 (European Union, 1992)

16 (Brunazzo, 2016, pp. 17-24), (European Commission, 2014c, p. 206)

17 The reform was part of the Single European Act, (European Communities, 1987)

18 (Baun, M.; Marek, D., 2014, p. 49), (Manzella, G. P.; Mendez, C., 2009, p. 19)

19 (European Union, 2007)

20 (Brunazzo, 2016, pp. 27-30)

21 (Damen-Koedijk, 2016, pp. 28-29); (Council, 2013a); (Kese, V.; Legner, M., 2012)

What Cohesion Policy will look like in the future is still uncertain. On 29 May 2018, the Commission released its proposal for the post-2020 sectoral legal framework.[22] The Commission's main objectives for the proposed policy design were simplification, flexibility of policy delivery, and greater alignment between funding and EU priorities.[23]

The draft legal text contains a number of measures to support a more flexible EU budget.

Unlike the 2007-2013 and 2014-2020 programming periods, the proposed legal framework is not backed by an EU-wide strategy or series of targets. Another area which the Commission proposal might affect are accountability arrangements. In particular, broadening single audit arrangements shifts responsibility for implementation to the Member States, and might reduce the role of the Commission. There is a risk that the proposed enhanced proportionate arrangements could jeopardise internal control achievements over the last two decades.[24]

1.1.3 Financial dimension of Cohesion Policy

Since the landmark reform in 1988 the European Union and the Member States have planned and implemented Cohesion Policy on a multiannual basis. In this regard, the multiannual nature of policy programming reflects the multiannual nature of the budgetary procedure.[25]

Article 312 TFEU requires the multiannual financial framework to ensure that Union expenditure develops in an orderly manner and within the limits of its own resources. The financial framework is established for a period of at least five years and the annual budget of the Union must comply with it.

The share of funds dedicated to Cohesion has always exceeded 25 % of the total EU budget since multiannual programming began in 1988. The peak was reached during the 2007-2013 programming period, where enlargement of the EU by 10 (12) new Member States is envisaged.[26] For the two programming periods covered by this paper, Cohesion spending represents more than one third of total EU spending. With this budget, ESI Funds[27] have become increasingly important for co-financing public investments, while compensating for declining national and regional investments as a result of the economic and financial crisis. Between 2014 and 2016, the Funds are expected to account for approximately 14 % of total public investment on average, and may even reach 70 % in some Member States.[28]

On the basis of the Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027[29], the European Commission is proposing a financial allocation for Cohesion Policy for the next programming period of 392 billion euros. This is equivalent to approximately 35 % of total appropriations.[30]

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22 Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument (Proposal Common Provisions Regulation, Proposal-CPR), (European Commission, 2018a)

23 (European Commission, 2018a, pp. 6-11); (European Court of Auditors, 2018e, p. 4)

24 Ibid

25 (European Commission, 2014c, p. 136)

26 (European Commission-DG Regio, 2018a, p. 2)

27 For the current programme period, the CPR lays down common rules for the ERDF, the ESF, the CF, the EAFRD and the EMFF

28 (European Commission, 2019c)

29 (European Commission, 2018d)

30 (European Commission, 2018e)

1.2 Theoretical aspects on the European Cohesion Policy

1.2.1 Regional-economic approaches

As regards the extent to which a European Cohesion Policy is needed from an economic point of view, there are essentially two regional economic positions: the *neoclassical model* and the *polarising theory model*.

Advocates of the neoclassical growth model assume an automatic equalisation of income levels between different economies provided that they have the same structural parameters (e.g. time preference, rate of increase of technical progress, and wear and tear of capital stock) or align with each other in the long term.[31] The main condition for alignment of structural parameters is free trade. For the European Union, this means that the completion of the European internal market and the associated reduction in trade barriers automatically results in economic convergence between richer and poorer regions and/or Member States (the "convergence" proposition).[32] According to this proposition, further state interventions are considered as hampering the adjustment process. An active Cohesion Policy thus leads to a misallocation of resources and to windfall gains for individual marker participants.[33]

By contrast, advocates of the polarisation theory contend that differences in prosperity between more economically developed regions and poorer areas tend to increase through free trade and market impact (the "divergence" proposition".[34] Due to agglomeration advantages[35], increases in productivity and economic performance in richer areas is greater than in poorer areas. In order to counter this divergence process, polarisation theory advocates support an active Cohesion Policy.[36]

1.2.2 Regulatory policy variants of a structural policy

If these assumptions of polarisation apply, an active Cohesion (or Structural) Policy would be justified. The question then remains as to what shape and form this policy should take. Different regulatory options for an active Cohesion Policy could be envisaged. These differ mainly in the distribution of public decision-making and implementation powers at European, national and sub-national levels. The options range from a purely national structural and social policy, to horizontal and vertical European financial equalisation systems, and ultimately to a centralised EU Cohesion Policy.[37]

The current policy model, i.e. the organisational structure of EU Cohesion Policy, is somewhere in the middle. The policy and its targets are decided at European level and shared by stakeholders at the European, national and regional levels.[38]

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31 (Klodt, H.; Stehn, J.; et al, 1992, p. 37)

32 (Beckmann, 1995, p. 67)

33 (Schoof, 2002, pp. 19-20); (Schäfers, M.; Fetzer, M-U., 1993, p. 59)

34 (Beckmann, 1995, p. 67)

35 For a detailed discussion of regional agglomeration and its effects, see (Minerva & Ottaviano, 2009), (McCann & Oort, 2009), and (Vatne, 2011)

36 (Schoof, 2002, pp. 20-21); For a detailed discussion of the two regional-economic approaches, see (Beckmann, 1995) and (Werner, 1996)

37 (Schoof, 2002, pp. 20-21); (Lang, J.; Nasholt, F.; Reissert, B., 1998, pp. 14-15)

38 (Schoof, 2002, pp. 21-22); For further details on the different stakeholders, see Chapter 1.3

1.3 The multilevel governance system

1.3.1 Multilevel governance as an implementing model for Cohesion Policy

From a neo-institutional viewpoint, the EU is increasingly viewed as an interconnected multi-level system, with a focus on interaction between the supranational, national and sub-national levels.[39] According to this school, European integration is "a policy-creating process in which authority and policy-making influence are shared across multiple levels of government – subnational, national, and supranational".[40] According to the multi-level governance model, decision-making powers are exercised at different levels rather than monopolised by state executives. In other words, supranational institutions – above all the European Commission, the Council, and the European Parliament – have independent influence over policy-making that does not derive from their role as agents of state executives.[41]

There are various stakeholders implementing Cohesion Policy, each with different roles and responsibilities. This system of shared decision-making and implementation powers between different levels and stakeholders from governments and administrations through to non-public stakeholders is an example of a highly developed multilevel-governance system.[42] A multilevel-governance structure involving different stakeholders at different levels is more complex and burdensome than a central, hierarchical structure.[43] The more executive and implementing power is delegated and shared between different layers and stakeholders, the more principal-agent relationships are established. External auditing intrinsically tied to accountability is one of the accountability measures and is a durable and reliable mechanisms since it ensures that agents act in the interests of principals.[44]

1.3.2 The principle of shared budget management as a result of a multi-level governance structure

As the bulk of EU policies, including Cohesion Policy[45], are implemented under the principle of shared management, this type of management dominates the implementation of the EU budget and is primarily responsible for delivering political results. Responsibility for implementing Cohesion Policy and the related funds, including control activities, is therefore shared by the Commission and the Member States.

Under shared management, responsibility for implementing policy fields and the related funds, including implementation monitoring, is shared by the Commission and the Member States. Although the Commission remains ultimately responsible for implementing the EU budget, responsibility for the actual management and control of EU funds and programmes lies with Member State authorities.[46]

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39 (Scharpf, 1994); (Marks, 1993); (Schoof, 2002, p. 15); (Milio, 2010, pp. 12-14); (Gualini, 2016, pp. 507-509); (Damen-Koedijk, 2016, pp. 32-33)

40 (Marks, G.; Hooghe, L.; Blank, K., 1996, p. 342)

41 (Marks, G.; Hooghe, L.; Blank, K., 1996, pp. 346-347)

42 (Damen-Koedijk, 2016, p. 32); (Gualini, 2016, pp. 507-508); (Papadopoulos, 2010, S. 1031)

43 (Milio, 2010, p. 12); (Knill, 2006, p. 362); (Damen-Koedijk, 2016, pp. 226-227)

44 (Pollack, 1997); (Dür, A.; Elsig, M., 2011)

45 Article 14(1) GR for the 2007-2013 period; Article 4(7) CPR for 2014-2020 programme period; Recital 179 FR (2018); (European Commission, 2014c, p. 223)

46 (Bode, 2019, p. 25); Article 59 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (Financial Regulation 2012, FR (2012)), (European Parliament; Council, 2012), (European Court of Auditors, 2017b, p. 13)

1.3.3 The organisational set-up of Cohesion Policy stakeholders within a multilevel governance system

Since Cohesion Policy is implemented using a multi-level governance approach, it involves a wide range of stakeholders at various levels. This chapter lists the main stakeholders involved and provides an overview of their individual responsibilities.[47]

1.3.3.1 Main stakeholders at European level

The decision-making process for Cohesion Policy is primarily defined by:

- the European Commission: The TEU exclusively grants the European Commission the right to initiate legislation (Article 17(2)). The Commission thus plays a pivotal role in advocating, establishing, expanding and reforming Cohesion Policy.
- the Council of the EU: The Council as legislative body comes into the spotlight once the European Commission has published its legislative proposals. Different configurations of committees and other bodies undertake the bulk of the Council's legislative work. Although the Council has a more important role than the European Parliament as far as the budget is concerned, for the sectoral legal framework (i.e. Cohesion Policy regulations) the Council has equal rights as the European Parliament in the "ordinary legislative procedure" according to Articles 289 and 294 TFEU.[48]
- the European Parliament: the European Parliament possesses a mix of legislative, supervisory and budgetary responsibilities.[4950] From a financial point of view, the European Parliament's power is limited to accepting or rejecting budgetary proposals by the Council for the Multiannual Financial Framework as part of the so-called "consent procedure". As regards the sectoral legal framework, the European Parliament is a fully-fledged co-legislator with the Council under the "ordinary legislative procedure".[51]

1.3.3.2 Programming and main stakeholders at national and regional level

1.3.3.2.1 Programming at national and regional level

As a starting point for intervention at Member State level, a strategic framework is established at European level, with the objective of guiding the Member States and the regions in drafting their own strategic reference framework.[52] The strategic framework serves as the basis for national and regional strategic priorities and planning. The outcome of this planning for the 2007-2013 programming period is the "National Strategic Reference Frameworks

47 For a more detailed overview of the different stakeholders, see (Stephenson, 2016) and (Bachtler, J.; Mendez, C., 2016)

48 (Bachtler, J.; Mendez, C., 2016, p. 123)

49 (Hübner, 2016)

50 For an overview, see (Stephenson, 2016). More details on the European Parliament's role in Cohesion Policy are provided by (Hübner, 2016)

51 (Bachtler, J.; Mendez, C., 2016, p. 124)

52 (Damen-Koedijk, 2016, p. 25); (European Commission, 2015b, p. 19); (Council, 2006a, p. 2); Article 10 CPR: No 1 of Annex I of the CPR

(NSRFs)"[53], and the "Partnership Agreements"[54] for the 2014-2020 programming period, in which the Member States describe and specify their priorities.

In a next step, and after the "broad" national strategic framework has been set, the regions step in and draft their Operational Programmes (OPs).[55] An OP is essentially a regional development strategy with a coherent set of priorities, i.e. specific objectives to be carried out with the aid of Cohesion Policy funds.[56] Based on the OPs, individual beneficiaries are selected as the ultimate recipients of EU support and so have ultimate responsibility for implementing Cohesion Policy.

1.3.3.2.2 Main stakeholders at Operational Programme level

In addition to the programming process described above, the Member States must designate certain authorities to manage and scrutinise intervention at regional level. These authorities are:[57]

- the managing authority (and, where necessary, one or more intermediate bodies);
- the certifying authority;
- the audit authority.

Each of these bodies fulfils a specific task at OP level.[58] Together, they must ensure the legality and regularity of the co-financed operations, under the Commission's supervision and final responsibility.

Audit authorities in the Member States must be functionally independent of the bodies implementing the programmes, i.e. the managing authority and the certifying authority. They are required to provide assurance to the Commission that an OP's management and control systems function effectively and, consequently, that the expenditure declared by the Member State to the Commission is legal and within the regulations.[59] In this role, they can be regarded as an extended arm of the Commission in the Member States as they are expected to provide independent assurance.[60]

1.4 The audit authorities' distinct role within the governance system

Given their role in the multi-level-governance-system, audit authorities (AAs) act as cornerstones of the system by providing the Commission with a basis for assurance that an OP's management systems and internal controls function effectively and are legal, and thus provide assurance as to the legality and regularity of the expenditure which Member States certify to the Commission. To achieve this, they carry out system audits and audits of operations (i.e. projects or groups of projects) and report to the Commission in annual control reports and annual opinions.[61]

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53 Articles 27-28 GR

54 Articles 5, 14-17 CPR

55 Article 32 GR; Articles 26-29 CPR

56 Article 2(1) GR and Article 27(1) CPR

57 Article 59 GR for the 2007-2013 programme period and Article 123 CPR for the 2014-2020 programme period

58 The tasks of the different authorities are stipulated in the sectoral regulations (Articles 60, 61 and 62 GR for the 2007-2013 programme period and Articles 125, 126 and 127 CPR for the 2014-2020 programme period)

59 (European Court of Auditors, 2018a, p. 212); Article 65 (2), 71 (1) of Proposal-CPR; Article 123 (4), 127 CPR; Article 59 (1) c, 62 GR

60 (Bode, 2019, p. 26)

61 (European Court of Auditors, 2016a, p. 184)

Effective management and control systems at national and/or regional level are of greatest interest to the Member States as they are a prerequisite for receiving funds. If a system has significant shortcomings, the European Commission may halt and/or suspend payments to the Member States.[62]

In line with the subsidiarity principle, the organisational set-up of the AAs differs considerably between Member States. Basically, there are five organisational models in practice, depending on the Member State's administrative structure: The central model, the regional model, the federal mode, the supreme-audit model, and the delegated-audit model.[63]

Depending on the organisational set-up, there is considerable variety between AAs in the Member States in terms of control costs, procedural efficiency and operational effectiveness.[64]

1.5 The single-audit concept

The prominent role of the AA within the internal control framework derives directly from the single-audit concept the Commission is applying actively since the 2007-2013 programming period.[65] Against that backdrop, the following paragraphs further explain the concept.

1.5.1 Background

The term "single audit" refers to a system of internal controls and audits that is based on the idea that each level of control builds on the preceding one, while having the Commission as ultimate responsible entity for the implementation of the EU budget on top of this structure.[66] Applying the single-audit concept means relying as much as possible on the work of other control layers and thus limiting the quantity of additional audit work to be carried out. This allows the best possible use to be made of resources, and avoid the duplication of work.[67]

Along with the establishment of a three-layer control structure at national level with clear distinctions of responsibilities among the different bodies and the creating of a national independent AA since the 2007-2013 programming period,[68] the sectoral regulations have taken the single-audit concept on board and allow the Commission's audit opinion to be based on the conclusions of a previous control layer, namely the AA's opinion.[69]

However, the single-audit concept does not solely apply upwards toward the Commission. It also applies from the AA downwards. The legal provisions do not require the AA itself to carry out all the audit work in relation to a programme. Instead, they open the possibility of outsourcing and delegating the audit work, which will forms the

62 Articles 91 and 92 GR for the 2007-2013 programme period and Articles 83 and 142 CPR for the 2014-2020 programme period; for the Commission's measures to protect the EU budget in Cohesion Policy, see (European Court of Auditors, 2017b, pp. 18-20); (Bode, 2012b, p. 259)

63 (Weber, M.; Latopoulou, C.; Guevara-López, J., 2014, pp. 42-43)

64 (SWECO International, 2010, pp. 6-7, 38-40); (European Commission, 2011); (Weber, M.; Latopoulou, C.; Guevara-López, J., 2014, pp. 44-45). Here, it should be borne in mind that these studies only take the ERDF and the CF into consideration. The ESF is not included. Real control costs are likely to be materially higher

65 (European Court of Auditors, 2013, pp. 16-17)

66 (Karakatsanis G., Weber M., 2016, pp. 175-176)

67 Article 73 (1) GR

68 See for example (Weber, M.; Latopoulou, C.; Guevara-López, J., 2014, p. 41); (Karakatsanis G., Weber M., 2016, pp. 172-175)

69 See Article 73 GR for the 2007-2013 programme period; Article 148 CPR for the 2014-2020 programme period

basis of the AA's audit opinion. However, it is the AA that retains responsibility for ensuring the independence of the other audit bodies and the quality of their work.[70]

1.5.2 Relevant internationally accepted audit standard

The concept of relying on the work of other auditors has been widely accepted and incorporated in the internationally accepted audit standard[71] (whose application is obligatory for audit authorities).[72]

The main principles in all the standards are that the principal auditor is expected to determine how the work of the other auditor will affect the audit, and to use audit procedures to ensure that the quality of the work performed by other auditors is acceptable and that the work has been performed in accordance with internationally accepted audit standards.[73]

1.5.3 Benefits of the single-audit concept

When correctly applied, the single-audit concept could result in significant efficiency gains for the Commission, as it enables it to gain a better overview of the effectiveness of the internal controls in place and of how the national administration has implemented Cohesion policy. The high volume of information from a large number of audits should allow the Commission to draw up more targeted action plans to address deficiencies identified by national audit authorities and to monitor whether this corrective action is delivering results.[74] Apart from the efficiency gains in the supervisory system, the reliance on the work of other control layers also reduces the administrative burden for the final beneficiaries in implementing the co-funded projects on the ground. In consequence, the single-audit concept has provided the basis for a more robust supervision by the Commission on the compliance of Cohesion spending with EU and national rules.[75]

1.5.4 General principles for the application of the single-audit concept

Although the single-audit concept is internationally recognised (see above) there is no single recognised definition of "single audit"[76]. Nevertheless, the European Court of Auditors identified specific characteristics of a control system that follows the single-audit approach and defines qualitative characteristics of an effective and efficient internal control framework and that must be fulfilled in order for the single-audit concept to be applied (e.g. a Community

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70 Article 62 (3) GR for the 2007-2013 programme period; Article 127 (2) CPR for the 2014-2020 programme period

71 The main internationally accepted audit standards are: The International Standard on Auditing (ISA) issued by the International Federation of Accountants, General Auditing Guidelines on Financial Audit (ISSAI 1000-2999) issued by the International Organization of Supreme Audit Institutions (INTOSAI), The International Standards for the Professional Practice of Internal Auditing (IPPF-Standards) issued by the Institute of Internal Auditors

72 Article 62 (2) GR for the 2007-2013 programme period; Article 127 (3) CPR for the 2014-2020 programme period

73 So apparent in ISA 600.2, 7-14. The International Standards on Auditing are available on the website of the International Federation of Accountants (IFAC): http://www.ifac.org/, accessed on 6 February 2019; (European Commission-DG Regio, 2009a, p. 4)

74 (Karakatsanis G., Weber M., 2016, p. 177)

75 (Karakatsanis G., Weber M., 2016, p. 177); In its special report no 16/2013 the European Court of Auditors analysed the implementation of the single-audit concept and its effectiveness, see (European Court of Auditors, 2013)

76 (European Court of Auditors 2004)

internal control framework should contain common principles and standards; controls should be applied to a common standard and coordinated to avoid unnecessary duplication).[77]

The Commission drew up eight general principles the AA has to comply with in order to effectively make use of the single-audit concept: organisational structure, independence, coordination, professional competence and capacity, conduct of work and quality control, access to documents, monitoring and supervision, documenting the reviews.[78]

To build on other auditors' work, the AA must to make an upfront assessment of adherence to these general principles in order to establish the extent of reliance by the AA on the work of the other audit bodies.[79]

1.6 The measurement of the effectiveness of Cohesion Policy

1.6.1 Guiding principles for delivering performance in Cohesion Policy

Traditionally, the policy implementation has tended to focus on making sure that its budget spending complies with relevant rules rather than achieving performance making a change for the citizens.[80] Hence, one of the major challenges for the EU Cohesion Policy is that the evidence for its effectiveness is so equivocal with both, academic research and evaluation studies, having reached widely differing conclusions on the results of Cohesion funds interventions.[81] However, it is widely accepted, that the success of Cohesion Policy interventions depends on the interaction with other EU (and non-EU) policies, and on the political economy dynamics.[82]

The performance orientation of the Cohesion Policy has gradually been increased over the programme periods. This is especially true for the 2014-2020 programming period. However, a number of areas remain challanging from a performance perspective: e.g. strategic planning, policy implementation, the generation and use of performance information in the monitoring/reporting and evaluation phases and ensuring sustainability.[83] The missing link of the Cohesion Policy's objectives to an overarching EU wide strategy for the coming programming period[84] is critical and might undermine the achievements so far.[85]

1.6.2 Performance achieved

1.6.2.1 The European Commission's performance measurement framework

The European Commission has an obligation to measure, monitor, evaluate and report on the progress achieved towards the objectives set.[86] For the three major funds to implement Cohesion Policy, the Commission classified its objectives into two categories: lower level "specific objectives" and higher level "general objectives and assigned a number of indicators to measure their achievements.The European Commission reports on performance and the

77 Ibid, pp. 8-11
78 (European Commission-DG Regio, 2009a)
79 (European Commission-DG Regio, 2009a, p. 6)
80 (European Court of Auditors, 2019c, p. 3)
81 (Bachtler, J.; Begg, I.; Charles, D.; Polverari, L., 2017, p. 11)
82 (Crescenzi, R.; Giua, M., 2017, p. 29)
83 (European Court of Auditors, 2019c, pp. 7, 15)
84 Ibid, p. 4
85 (Bachtler, J.; Begg, I.; Charles, D.; Polverari, L., 2017, p. 19)
86 Article 319 TFEU; Article 41 (3) (h) FR (2018)

achievement of the defined objectives in several ways, e.g via programme statements, programmes' performance overview, annual activity reports, and annual management and performance reports.[87]

Based on this framework, it is not ease to extract the right information on the performance of the Cohesion Policy. Firstly, the performance information is dispersed in various reports and difficult to connect to EU strategic objectives. Secondly, the Commission uses too many indicators, whose informative value is often limited. In particular, as the defined indicators show, the Commission relies heavily on input and output indicators that give only limited information on the performance of EU action. There are too many high-level, general impact (often context) indicators, on which influence of EU action is rather limited.[88]

1.6.2.2 Impact achieved

The aims the TFEU attributed in Article 174 to the Cohesion Policy[89] must be the guiding reference points when determining indicators to measure the success of this policy field. In consequence, the development of regional welfare and its comparison is a proper indicator to measure convergence. Hence, the impact of Cohesion Policy on regional convergence can be seen by examining how the dispersion in regional GDP/head has changed over time.[90]

The evaluation results that during the programming period there was a reduction in regional disparities in GDP per head across the EU, in particular between Convergence regions[91] and others.[92] However, there were different developments in the different categories of regions and the pace of convergence was relatively consistent over the last 14 years, and following this relatively slow pace, it will take the Convergence regions minimum another 35 years to converge to the average.

Another indicator to measure the extent of convergence in economic performance between regions is the change rate of dispersion in regional GDP per head. Over the 2000-2006 programming period, there was a significant reduction in disparities in GDP per head between (NUTS 2) regions in the EU, which continued up to 2009. Between then and 2011, disparities widened slightly before narrowing marginally from then until 2014. The crisis, therefore, seems to have slowed down the long-term tendency for regional disparities to diminish.[93] Richer and economically more developed regions seem better able to compensate for the aftermath of the crisis, e.g. via publicly financed economic stimulus plans. In addition, their economy is more robust and flexible to adapt.

Although, there are definitely positive trends toward cohesion of regional welfare (expressed in GDP), it is not easy to say how far the higher growth of the GDP in the Convergence regions is attributable to Cohesion Policy interventions[94] Cohesion Policy interventions are definitely not the sole cause for regional development effects and hence there is a number of explanatory variables.

Counterfactual analysis, econometric analysis and economic models carried out on behalf of the European Commission result in the causal effect that Cohesion Policy leads to an increase in GDP above what it otherwise would be; this effect persists in the long term because of the effect of policy in strengthening the productive potential

87 (European Court of Auditors, 2018a, pp. 94-95); (European Court of Auditors, 2017a, pp. 66-71)

88 (European Court of Auditors, 2018a, pp. 89, 102)

89 To promote an overall harmonious development; strengthening of the economic, social and territorial cohesion; reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions

90 (European Commission, 2016e, p. 19); An overview of how the effects of Regional Policy can be measured provides (van Dijk, Folmer, & Oosterhaven, 2009)

91 Regions with GDP per head below 75 % of EU average

92 (Applica; Ismeri Europa, 2016, pp. 11-12)

93 (Applica; Ismeri Europa, 2016, pp. 72-73)

94 Ibid, pp. 76-77

of the economies concerned.[95] The Commission *ex post* evaluation concluded that, according to macroeconomic models assessing the full impact of Cohesion Policy on growth, in the EU12 Cohesion spending led to an increase in GDP in 2015 by 4 % above what it otherwise would have been. For the EU15, the effect is below 0.5 %, and for the entire EU the effect is estimated to be slightly beyond 0.5 %.[96] Other studies confirm the positive effects of structural funds on regional growth.[97]

The average rate of ERDF and Cohesion Funds support[98] to the GDP for the entire EU is 0.3 %, for the EU12 2.03 % and for the EU15 0.22 %. These relations correlate quite high to the impact of Cohesion Policy on the GDP based on macroeconomic models. In consequence, the lower the relationship of Cohesion Policy support to total public investments are, the lower the potential impact of Cohesion funding to the welfare expressed as GDP.

1.6.2.3 Determinants of effectivity

There is a variety of endogenous and exogenous factors influencing the effectivity of Cohesion means in the regions. Two of the factors often quoted as having a strong impact on the effectivity are administrative capacity[99] and the level decentralisation[100].

1.6.2.3.1 Absorption of funds

In order to have an impact, Cohesion funds must be absorbed as soon as possible.[101] The later the funds are requested, the later the funds can create an effect. In this connection, the administrative capacity play a vital role, since it determines, among other, whether the proper projects are selected and the administrative processes are properly executed in order to be able to request payments from the European Commission. The absorption rate of Cohesion funds might serve as indicator to assess the administrative aptitude. In particular the Member States entered the EU in 2004 and later had problems to absorb the available funds. Poland, Slovenia, and the three Baltic countries are exceptions with absorption above the average, and Hungary within the average. Member States that were able to absorb the funds above the EU average outperformed in terms of a higher ERDF and Cohesion Funds support to GDP.

The degree to which the difficulties to absorb the funds materialise in a final loss of EU funds for the Member States can only be determined once the operational programmes are finally closed.[102] For the 2000-2006 programming period , there were net financial corrections at closure for a number of ERDF and ESF programmes and CF projects with an overall amount of 2 423 million euro (or 1.1 % of the total budget). The ECA expects a situation to be similar for the 2007-2013 period.[103]

As of 8 July 2019, and more than 5.5 years after the start of the programming period, solely between 22 % and 27 % of the total available funds are implemented. In consequence, the Member States have only 4.5 years[104] to absorb and

95 Ibid, pp. 208
96 (Applica; Ismeri Europa, 2016, pp. 204-205, 211-212)
97 An overview of the results and conclusions from different econometric studies provides (Pienkowski, J.; Berkowitz, P., 2017)
98 Here ESF is not regarded since there is no material effect on the relations
99 (Milio, 2010, pp. 175-181); (Szabo, 2017, pp. 248-249)
100 (Baltina, L.; Muravska, T., 2017); (BAK Basel Economics, 2009a)
101 Provided that there are projects ready for implementation
102 The closure of the 2007-2013 programmes is still ongoing
103 (European Court of Auditors, 2017b, p. 68)
104 Implementation of the 2014-2020 period can take place until 31 December 2023

implement the remaining funds. This bears the risk that the focus will be more on absorption than on achieving results.

1.6.2.3.2 Decentralisation of decision making

Decentralization is perceived as the sum of competencies of all sub-national levels. The more those sub-national-level-competencies are, the more decentralized a country is. From a state's perspective decentralization comprises all competencies the state does not execute itself but a subordinate lower level (e.g. regions, municipalities). From a regional perspective, the sum of competencies a region possess expresses its regional autonomy.[105]

A variety of reasons exists why decentralisation positively affects the economic development of a region.[106] One of the main arguments constitutes effectivity. It is mainly the regions, which know the preferences of its citizen and economic entities best. This constitutes the underlying rational of the European principle of subsidiarity. If preferences and economic structures are heterogeneous and vary between regions, a single and centralised policy cannot meet all the needs on the ground. It is a common understanding, that regional solutions (i.e. at subnational level) are more effective in general. Another factor affecting economic growth is efficiency. A regional administration is more familiar with the local specificities of markets and can provide public services with a lower level of resources.[107]

The question is, whether this assumption is also true for the Cohesion Policy intervention.

There are various indicators measuring the level of regional autonomy. For the purpose of the study at hand, the advanced decentralisation index of BAK Basel Economics is selected to differentiate the Member States according to their level of centralisation/decentralisation. This index combines quantitative and qualitative elements both of fiscal and decision making power and provides a more holistic picture of regional autonomy.[108] The higher the index, the higher the level of decentralisation or, ceteris paribus, the lower the level of centralisation.

The analysis results that there is no positive correlation between the level of decentralisation and the GDP-growth for the EU Cohesion Policy. Quite contrary to the results of the economy in general, the analysis shows the higher the decentralisation, the lower the impact in the GDP growth-rate. Taking only the EU12, which have principally a higher centralised structure, there is also no positive correlation but rather a zero-correlation.

These results might appear quite surprising. It would be up to further research to establish the reasons and their dimensions for this picture.

Chapter 2 Functions and responsibilities of national audit authorities in the framework of the Cohesion Policy

2.1 Introduction

The national AAs form an integral and central pillar within the multi-layer governance system for the EU structural funds, which qualifies as the most important vehicle of the EU Cohesion Policy. The main role of the AAs is an independent ex-post control of the use of EU funds. The AAs' spectrum of responsibilities is very broad and

105 (BAK Basel Economics, 2009a, p. 1)

106 Ibid, p. 5; (BAK Basel Economics, 2016, pp. 17-18)

107 (BAK Basel Economics, 2009a, p. 5)

108 (BAK Basel Economics, 2009a, pp. 1-3); (BAK Basel Economics, 2009b, pp. 22-25); (BAK Basel Economics, 2016, pp. 10-14)

heterogeneous, ranging from current verifications and reporting requirements to annual reports and one-off statements. Furthermore, the AAs need to cope simultaneously with different programming periods, which have different functional requirements. This is a highly challenging professional and organisational combination.

This chapter focusses on the main AA's responsibilities.

2.2 Responsibilities of national audit authorities

2.2.1 Compliance assessment of the management and control system

2.2.1.1 Programming period 2007-2013

In order to apply for interim payments under Article 85 GR the Member State must submit a comprehensive description of the management and control system (Article 71(1) GR) to the Commission, which has to approve it. The details of that the requirement are stipulated in Article 21 CIR (2006) and, in particular, in Annex XII of this implementing regulation.

In accordance with Article 71 (2) GR, this description shall be subjected to an independent *ex-ante* assessment of the systems set up and on their compliance with Articles 58 to 62 GR before they are put in place. This compliance assessment is the responsibility either of the AA or of a public or private body, which is functionally independent of the managing and certifying authorities.[109] If, in the context of this evaluation, the assessing body identifies deficiencies leading to reservations regarding the compliance of the management and control system with the requirements of Articles 58 to 62 GR, this would directly affect the payments from the Community budget, as the Commission would only execute payments if these reservations can be lifted.[110] Finally, in obtaining a reliable assurance that the management and control system is set up in accordance with the regulatory requirements and functions effectively, the compliance assessment is a fundamental pillar in the overarching aim of assuring that co-financed expenditure is eligible for funding. Against this background, the conformity assessment is of fundamental importance for the whole operational programme. Accordingly, the body entrusted with this work must carry out the assessment with the highest sensitivity.

2.2.1.2 Programming period 2014-2020

As in the previous programming period, the disbursement of EU funds for the current programming period is contingent on a positive assessment of the designation by an independent audit body (Article 124(1), Article 135(3) CPR). The assessment of the designation replaces the conformity assessment as it was called in the previous period.

The designation procedure for the current programming period has developed from the arrangements applicable for the 2007-2013 period. In short, the entire designation or compliance assessment process is much more structured and closely governed. The formulation of binding designation criteria and the issue of a Commission guidance note entirely dedicated to the designation procedure clearly demonstrate the importance of this procedure. However, there are similarities to the compliance assessment procedure used at the start of the previous programming period. First and foremost, the aim of the designation is the same as it was for the compliance assessment, i.e. to ensure that the necessary and appropriate management and control system has been set up from the outset of the period to check that the spending complies with the legal requirements.[111]

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109 Article 71 (3) GR

110 Article 71 (2) (b) GR

111 Ibid, pp. 5-6

2.2.1.3 Outlook for 2021-2027 programming period

For the upcoming programming period, there is no requirement to undertake a designation process.[112] Nor is the AA obliged to carry out a compliance assessment of the systems set up. The Member States must merely identify the programme authorities.[113]

Since the designation process was quite cumbersome and lengthy in many Member States, the abolition of the designation process could make the start to the 2021-2027 programming period smoother and save a considerable amount of human resources.[114] Nevertheless, since the goal of a designation/compliance assessment is to ensure that the proper MCS has been set up and that EU funds are spent correctly, then the time and resource saving in the short term might reduce the effectiveness of the MCS in the mid and long term. Investing some work in auditing the set-up of a system might prevent systemic problems from emerging and accumulating later on.

2.2.2 Audits of operations

2.2.2.1 Programming period 2007-2013

Pursuant to Article 62(1)(b) GR, audits of operations for which expenditure has been declared to the Commission in payment claims are one of the key tasks of the AA.

The audit scope and technical aspects are set out in the Commission's Implementing Regulation. In general, the audits must be carried out on-the-spot on the basis of documentation and records held by the beneficiary (Article 16(1) CIR (2006)). This legal requirement leads to a more reliable audit opinion as it follows that the AA must obtain the audit evidence directly using original documents. This clearly emphasises the role of the AA within the assurance cycle.

In particular, the compliance check against the Community and national rules has opened up a wide field of audit. Whereas Community provisions are quite clear[115], the national provisions - depending on the aid's purpose, the area of support, and the circle of beneficiaries – can be very extensive.[116] In any event, it is clear that, due to the potentially wide regulatory complexity, the compliance check against national provisions can prove difficult. In order to provide a well-founded judgment, the AA must inevitably possess relevant practical experience alongside broad theoretical knowledge and expertise to cover the audit field.

2.2.2.2 Programming period 2014-2020

The audits of operations are key for assessing the legality and regularity of the funds managed and thus remain a focal point in the AA' work programmes for the current programming period. Article 127 CPR forms the legal basis for conducting audits of operations. It is worth mentioning that the main rules on the scope and content of audits of

112 P. 93 (legislative financial statement) of Proposal-CPR

113 Article 65 (1) of Proposal-CPR

114 Also in principle welcoming the abolition of the need for a formal designation process (European Court of Auditors, 2018e, p. 46)

115 The Community rules on eligibility are stipulated in Article 56 GR. Moreover, the state aid rules have to be considered

116 ECA's briefing paper on simplification shows for example differences in the national rules/systems, (European Court of Auditors, 2018b, p. Annex III)

operations and the methodology for selecting the sample of operations are governed by a delegated regulation[117] whereas in the previous programming period these aspects were covered either by the Implementing Regulation or in a guidance note. Since the "legislative rank" of a delegated act is higher than that of an implementing act[118] and of a guidance note, this architecture reflects the significance of this audit task and is a shift towards higher legal certainty.[119]

Although the CDR (2014) stipulates the audit tasks in a more concrete format, the scope itself has not materially changed compared with the previous programming period.

2.2.2.3 Outlook 2021-2027 programming period

In general, given the positive trends in the development of error rates[120], the Commission regards it as necessary to retain the existing fundamental principles of the management and controls system and the financial management rules introduced in the 2014-2020 period, for the next programming period.[121] The AA is still in charge of carrying out audits of operations as a cornerstone to provide assurance on the effective functioning of the MCS and the regularity of the expenditure included in the accounts submitted to the Commission.[122]

However, the Commission is strengthening its simplification measures further in order to achieve a more proportionate governance system and intends to streamline audit activities by decreasing the number of audits of operations carried out at beneficiary level.[123] In this context, it is no surprise that only one single Article deals with the audits of operations (Article 73 of Proposal-CPR). In comparison, in the current period two Articles of a delegated regulation and a 275-page guidance note specify the scope and content of the audits of operations and the technical details on the sampling methods. It remains to be seen whether the Commission makes use of its delegating power stipulated in Article 73(4) of the Proposal-CPR and sets out standardised off-the-shelf sampling methods and approaches.

One more restriction in the AA's audit rights is in the rules on the audits of financial instruments. The general principle that the AA shall carry out its audits at the level of bodies implementing the financial instrument still applies for the upcoming programming period.[124] However, the proposed legal text no longer contains the option that the AA can conduct audits at the level of the final recipients if it cannot satisfy itself by checks of documentation at the level of the managing authority or the implementing bodies. This raises the question of what the AA can do to fill a

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117 Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund (CDR (2014)

118 Delegated acts are governed in Article 290 of TFEU. Implementing acts are governed in Article 291 of TFEU. By a delegated act the Commission possesses the power to adopt - out of the ordinary legislative procedure - acts of general application to supplement or amend certain non-essential elements of the legislative act. In contrast, by an implementing act the Commission can "solely" set uniform conditions for implementing legally binding Union acts

119 Nevertheless, even in the current period, guidance notes contain detailed technical aspects and methodological considerations

120 Ibid, pp. 24, 241

121 P. 93 (legislative financial statement) of Proposal-CPR

122 Article 71(1) of Proposal-CPR

123 Pp. 93-94 (legislative financial statement) of Proposal-CPR

124 For 2007-2013 programme period: (European Commission-DG Regio, 2012, p. 27); For the 2007-2013 programme period: Article 40(3) CPR; For the 2014-2020 programme period: Article 75(3) Proposal-CPR

potential assurance gap due to missing or unreliable documentation at the level of the management of the financial instrument.

In order to avoid duplication of audits of the same expenditure and to minimise audit costs and reduce the administrative burden on beneficiaries, the Proposal-CPR contains a separate article (Article 74) on single audit arrangements. If correctly established, and provided that there will be a framework which ensures that expenditure is checked according to the same standards and that the audit results are reported accurately, this option might have a real simplification effect.[125] However, the single audit arrangements explicitly specify that AA can only approach beneficiaries, if documents and checks of the managing authorities are insufficient. Since the burden of proof is with the AAs, this structure puts the independence of AA at risk. In the future, the AA may need to justify why they need to audit.

2.2.3 Systems audits

2.2.3.1 Programming period 2007-2013

Pursuant to Article 62(1)(a) GR, the AA shall audit the effective functioning of the management and control system for the operational programme.

As already indicated above, a functioning system of governance is essential for the provision of funding. If the systems are subject to significant or serious shortcomings in their functioning, the Commission is empowered to interrupt and suspend payments to the Member States (Articles 91 and 92 of the GR)[126]

In this context, the so-called system audits under to Article 62(1)(a) GR form the essential basis for assessing the entire system.[127] This becomes particularly apparent from the fact that the systems audits, together with audits of operations, constitute the heart of the AA's annual control report to the Commission.[128] As such, they represent the starting point for the audit opinion as to whether the management and control system functions effectively, so as to provide reasonable assurance that statements of expenditure presented to the Commission are correct and, as a consequence, that the underlying transactions are legal and within the rules.[129]

Thus, the systems audits are crucial to drawing an overall audit conclusion on the effectiveness of the MCS. The systems audits serve to evaluate the control and the inherent risks of the underlying systems and therefore to assess the risk of material misstatements in the expenditure declared to the EU. The results of the systems audits directly influence the size of the sample used its substantive testing (i.e. audits of operations) and thus, the workload for the audit year.[130]

As already stated above, the main actors in the management and administration of an operational programme are the MA and the CA. As a consequence, these bodies are the focus of systems audits. These authorities can carry out their tasks directly or they can delegate the tasks to intermediate bodies (Article 59(2) GR). A sound assessment of the system's effectiveness can therefore only be made if the AA includes all key players involved in the management and control system in its audits.[131]

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125 Ibid, pp. 146-147. For the discussion on the Single-Audit-Concept see paragraph 1.5

126 (Bode, 2012b, p. 259)

127 (Bode, 2012a, p. 175)

128 Article 18(2) CIR (2006)

129 This fact also highlighting European Commission, (European Commission-DG Regio, 2009b, pp. 10, 13)

130 Ibid, pp. 13-14

131 (Bode, 2012b, pp. 261-262)

2.2.3.2 Programming period 2014-2020

In accordance with Article 127(1) CPR, the AA's responsibility also includes assessing the proper functioning of the MCS. Consequently, systems audits have remained an essential pillar for the submission of the annual audit opinion by the AA referred to in Article 127(5)(a) CPR. Since the general aspects concerning systems audits have not changed (e.g. assurance and audit risk model, the application of internationally accepted audit standards) the chapter above should be consulted.

The general principles of the MCS are governed in Article 72 CPR and do not materially differ from the ones in the past period. However, the following aspects are explicitly highlighted in the current legal framework compared to the previous one:

- computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

As a result, the detailed specifications of the MCS and the methodology to comply with them have changed accordingly. In the Commission's guidance for the 2014-2020 programming period[132] the hierarchical assessment schema has been kept, but the key requirements and assessment criteria have been altered and extended. In particular, new or altered key requirements can have a material impact in terms of the quantity and intensity of the AA's workload.

2.2.3.3 Outlook 2021-2027 programming period

Also for the post 2020 programming period, the AA shall be responsible for carrying out system audits (Article 71(1) of Proposal-CPR). The general rules on management and control as governed in Article 63 of Proposal-CPR will not alter materially compared with the current programming period. Though, there is a fundamental limitation in scope. Article 72 of Proposal-CPR refers to the need to include "systems audits of newly identified managing authorities and authorities in charge of the accounting function" in the AA's audit strategy. Apparently, the AA is not any longer obliged to cover the entire (material) operational programme' management system. Whereas the intention to ensure a smooth roll-over and start of the programming period is comprehensible, the involved bodies in a programme management are only one angle determining the risk level. The operational programme itself, its structure including the rules determining the implementation and the eligibility of operations and expenditure, or the approach to management verifications constitute other major parts determining the audit risk. Not considering these aspects would undermine the assurance level.[133]

While for the current and previous programming periods the Commission has provided the Member States with detailed guidance on the methodology for assessing the MCS, for the future programming period the Commission will abolish all subsequent legislation (i.e. implementing and delegated regulations) and detailed guidance notes.[134]

132 (European Commission, 2014e)

133 (European Court of Auditors, 2018e, p. 45)

134 P. 94 (legislative financial statement) Proposal-CPR

2.2.4 Annual control report

2.2.4.1 Programming period 2007-2013

On an annual basis, the AA must consolidate the audit results and form an overall audit statement. According Article 62(1)(d)(i) GR, the AA shall submit an annual control report to the Commission at the latest by 31 December of each year, setting out the findings of the audits carried out during the previous 12 month-period ending on 30 June of the year concerned and reporting any shortcomings found in the systems for the management and control of the programme. On this basis, the Commission will issue an opinion as to whether the MCS functions effectively, so as to provide a reasonable assurance that statements of expenditure presented to the Commission are correct, and as a consequence offer reasonable assurance that the underlying transactions are legal and regular (audit opinion).

The annual control report, including the opinion, is important in assessing the functioning of the MCS.[135] All the audit procedures carried out during the year provide - due to different perspectives - only partial insights into the system as a whole. The annual control report collects these individual pieces of a puzzle and consolidates them to an overall assessment. The annual control report and the annual opinion are the main sources of information for the Commission to verify the functioning of the MCS, and thus to discharge their overall responsibility to the Community budget under shared management. [136]

To meet this expectation, it is axiomatic that the aggregated information must be of high quality. Irrespective of the actual reporting system, the preparation of the annual control report is a challenging and time-consuming task. On the one hand, the audit results need to be checked for consistency. Observations might possibly have changed in terms of quantity and/or quality following the adversarial procedure. Or, as part of the overall failure analysis, similar situations could, in theory, lead to different findings in individual audit reports. Furthermore, when assessing the effectiveness of the MCS, the errors found must be evaluated both quantitatively and qualitatively.[137] In addition, only such an extensive analysis will spot problems of a systemic nature, which should be reported and quantified separately.[138] In particular, the quantification of systemic errors can be very time-consuming and laborious as this necessarily involves additional audit procedures. Furthermore, audit results from previous years must be reviewed and, if necessary, updated error rates from previous years must be reported on.[139]

2.2.4.2 Programming period 2014-2020

In view of the exceptional importance of the annual control report for the assessment of the MCS, this reporting element has been kept in the current programming period. The legal requirement to draw up a control report setting out the main findings of the audits carried out, including findings with regard to deficiencies found in the MCS, and the proposed and implemented corrective actions is laid down in Article 127 (5) (b) CPR.

The Commission implementing Regulation (EU) 2015/207 lays down detailed rules as regards the models for the audit opinion and the annual control report. A separate note provides additional guidance.[140]

Whereas the general content and the elements have remained the same, there are two new aspects worth mentioning. Firstly, the deadline for submission the annual control report and the audit opinion has been prolonged from 31

135 (European Court of Auditors, 2018a, p. 206)
136 (European Commission-DG Regio, 2009b, p. 2)
137 Ibid, p. 8
138 Ibid, pp. 6, 9
139 Ibid, p. 9
140 (European Commission, 2015c)

December year N to 15 January year N+1. Secondly, the audit authority has to give a statement on the accounts for the accounting year started on 1 July year N-1 to 30 June year N.

2.2.4.3 Outlook 2021-2027 programming period

For the post 2020 programming period, the proposed regulation retains the requirement to draw up an annual control report and submit it to the Commission.[141]

The AA must provide the Commission with the annual control report together with an annual audit opinion by 15 February of year N+1.[142]

As the aim and the content of the annual control report and the annual audit opinion[143] are still the same as for the 2014-2020 programming period, the details above still apply.

2.2.5 Annual summary / Annual clearance

2.2.5.1 Programming period 2007-2013

The Member States must produce an annual summary at the appropriate national level of the available audits and declarations (Article 53b(3) FR (2006)).

For the European Commission, the annual summary constitutes another essential building block to obtain assurance on the legality and regularity of the funds within its sphere of responsibility. In addition, the underlying process of establishing annual summaries can be valuable in itself when it serves to increase awareness at the national level about the financial management of the EU.[144]

The annual summary does not replace the annual control reports and audit opinions signed by the AA for each operational programme. Rather, it merely summarises the audit opinions and the corresponding key information (e.g. error rates). For countries with only one AA this just means some repetition. But for federal states like Germany with 16 regional AAs and one federal AA it inevitably requires a consolidation and an entity in charge of doing it. Apart from that, as the annual control report and the audit opinion refer to the period 1 July of year N-1 to 30 June of year N, but in the annual summary the AA needs to report on the results of system audits between 1 July of year N and 31 December of year N (i.e. outside of the reporting period for the annual control report and the audit opinion),[145] additional efforts are needed to extract the information.

2.2.5.2 Programming period 2014-2020

The legislative framework for the current programming period introduced a systematic retention of 10 % of each interim payment authorised. This is a measure to protect the EU budget against the risk of including irregular expenditure into the cost declarations until the annual assurance package, including the annual accounts covering the

141 Article 71(3)(b) of Proposal-CPR

142 Article 71(3) of Proposal-CPR in conjunction with Article 63(5), (7) FR (2018)

143 Annex XVI to Proposal-CPR provides a template for the audit opinion. Annex XVII to Proposal-CPR provides a template for the annual control report

144 (European Commission, 2010b, p. 3)

145 Ibid, p. 6

expenditure concerned by the interim payments, has been submitted by the Member States and approved by the Commission. The Commission releases the 10 % retention after the annual accounts have been approved.[146]

A so-called 'assurance package' must be submitted to the Commission by 15 February of year N+1.[147]

The Commission only accepts the accounts and pays the 10 % retention and the cleared balance (which can also be recoverable if the pre-financing was higher than the final eligible EU contribution) where it is able to conclude that the accounts are complete, accurate and true. In that connection the conclusions drawn by the AA are crucial as the Commission bases its conclusion on the AA's unqualified audit opinion regarding the completeness, accuracy and veracity of the accounts.[148] However, the acceptance of the accounts does not prevent the Commission from conducting its work on the legality of the expenditure in the accounts.[149] In fact, the Commission's actual checks on legality and regularity take place after the process of examination and closure of accounts and payment of the final balance. As a consequence, the acceptance of accounts by the Commission does not provide certainty to Member States or to beneficiaries, since the related expenditure is subject to additional Commission checks after the actual closure of the accounts.[150]

For the purpose of the audit opinion, in order to conclude that the accounts give a true and fair view, the audit authority shall verify that all elements required by Article 137 CPR are correctly included in the accounts and correspond to the supporting accounting records.

The CDR (2014) clearly states that the results of its system audits and its audits of operations are the main audit work, which the AA can use to support its opinion (Article 29(3) of CDR (2014)). However, the audit of the accounts forms a separate and "active" audit procedure, which complements the other audit procedures in order to provide a reasonable assurance on the truth, completeness, accuracy and veracity of the amounts declared. The AA can only derive such an opinion if its carries out final additional verifications on the certified accounts.[151]

2.2.5.3 Outlook 2021-2027 programming period

Also for the programming period 2021-2027, the rules for payment foresee that interim payment claims are reimbursed only at 90 %.[152] The Commission determines the remaining amounts to be reimbursed or to be recovered in the realm of the annual clearance of the accounts when calculating the balance of the accounts.[153]

The elements of the assurance package, which must be submitted to the Commission by 15 February year N+1, are principally the same as in the current period (the accounts, the management declaration, the audit opinion, the annual control report).[154] In order to provide a true and fair view on the accounts, the specifications - which are essentially the same as in the current period - stipulated in Article 92(3) of Proposal-CPR need to be checked.

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146 Article 130 in conjunction with Article 139 CPR; (European Court of Auditors, 2017b, p. 63)ECA

147 Article 138 CPR in conjunction with Article 59(5) FR (2012) ; The assurance package comprises of the certified accounts prepared by the certifying authority, the management declaration and the annual summary of controls and verifications prepared by the managing authority, and the control report and audit opinion on accounts, on the proper functioning of systems and on the regularity of expenditure prepared by the audit authority

148 Article 139 (2) CPR

149 (European Court of Auditors, 2018a, p. 207)

150 (European Court of Auditors, 2018e, pp. 54-55)

151 (European Commission, 2016b, p. 4)

152 Article 87(2) Proposal-CPR

153 Article 94 Proposal-CPR

154 Article 92(1) Proposal-CPR

From the proposed legal text, it is not clear what audit procedures the legislator expects from the AA to come to an audit opinion. Article 71(3)(a) Proposal-CPR merely states that the audit opinion shall be based on all audit work carried out. In the current programming period, an elaborated Article of a delegated regulation and a separate guidance note supported the AA shaping their audit procedures. Consequently, it is fully up to the AA to decide what audit work in what extend it will carry out based on professional judgement and taking internationally accepted audit standards into account.

2.2.6 Closure declaration

2.2.6.1 Programming period 2007-2013

During the programming period, the cumulative total of pre-financing and interim payments made must not exceed 95 % of the contribution from the Funds (ERDF, ESF, CF) to the operational programme.[155] The Commission pays the final balance upon submission of the closure declaration, as set out in Article 89(1)(a)(iii) GR.[156]

Accordingly, the drafting of the closure declaration, which is the responsibility of the AA (Article 62(1)(e) GR), has high fiscal importance. In the closure declaration, the AA must give its opinion on the question of whether the final application for payment of the final balance is valid and whether the transactions underlying the final application for payment are legal and regular. In this context, the declaration by the AA does not refer to specific situations or individual procedures. In the context of an overall assessment, and on the basis of all the work carried out during the whole programming period, it provides a final opinion on all transactions charged to the EU budget.[157] Both the closure declaration and the final control report must follow the template set out Annex VIII CIR (2006).

It must also borne in mind that the issue of the closure declaration comes after the end of the programming period, thus at a time when the work for the subsequent programming period is already ongoing. Therefore, the overlapping tasks need to be planned well ahead to ensure that the human resources needed are available.

2.2.6.2 Programming period 2014-2020

In the Cohesion Policy area, the regulations for the 2014-2020 period do not require the AAs to submit an audit opinion or a report for the whole programming period.[158]

The clearance of the accounts is done on a rolling annual basis (see paragraph 2.2.5.2 above). The CPR does not call for a final audit opinion or a final and comprehensive control report in its section on the closure of the operational programmes (Article 141 CPR). The Member States must just submit a final implementation report for the operational programme.

155 Article 79(1) GR

156 Further conditions for the payment of the final balance according to Article 89(1)(a) GR are the submission of an application for payment of the final balance, and the submission of the final implementation report for the operational programme

157 Article 18(3) CIR (2006)

158 (European Court of Auditors, 2017d, p. 28)

2.2.6.3 Outlook 2021-2027 programming period

As the proposed legal framework does not envisage having an overall closure of the programme at the end of the programming period, the previous paragraph applies.

2.3 Impact of the audit authorities work on the assurance level of EU spending

2.3.1 Development of error rates reports by the ECA

The 2007-2013 programming period saw a strengthening of the audit and control provisions. Factors that materially contributed towards a higher assurance level on EU spending in the Cohesion area are for example the compliance assessment and the submission of annual control reports.[159]

The error rates reported by the European Court of Auditors for the reference years can serve as an indicator to measure the effectiveness of the AAs' work and whether the improvements in the management and control system actually materialises. Although the ECA's audit approach have changed slightly over time[160] (the current version of the ECA's audit methodology can be found on the webpage of the ECA[161]), the way the results can be interpreted did not. Whenever, the ECA identifies errors at Member State level, it essentially means that the management and control system is not working effectively. Since the AA's form the last line of defence on national level within the governance structure, errors spotted by the ECA are ultimately due to deficiencies in the AA's work, even if the errors are caused by beneficiaries of by managing authorities or other involved bodies. The assumption here is, that if the AAs conducted a properly risk assessment and carry out well and soundly planned audits, errors rooted at other levels, should have been identified.

The analysis is based on the data the ECA conveys in its Annual Reports. However, a long term analysis of the error is not easy to conduct, as not only the presentation of the figures changed over the years, but also the level of detail and aggregation. However, despite certain constraints, it is still possible to draw the following general conclusions and to identify a long-term trend:

- Overall, the last decade demonstrates a marked improvement in the legality of EU spending: between 2006 and 2010, the Commission succeeded in improving financial management, bringing down the error rate from 7 % in 2006 to 3.7 % in 2010.[162] While the error rate rose to 3.9 % in 2011 and to 4.8 % in 2012, it has been improving every year since then: 4.5 % (2013), 4.4 % (2014), 3.8 % (2015), 3.1 % (2016), and finally 2.4 % in 2017.
- The overall error rate for the EU budget has been below the one for Cohesion. This is comprehensible, as the Cohesion Policy is one of the most complex, thus -an error prone field. This derives mainly from the special set-up of this area. In Cohesion, the Member States receive payments from the EU budget based on reimbursement of actual expenditures in a multi-level governance system. In the agricultural policy, in comparison, the payments are mainly based on entitlements, which is far less error prone. However, the gap between these two error rates diminished from 4 % in 2006 to meanwhile 0.6 % for the year 2017. Furthermore, there is a clear and robust trend towards an alignment of the two rates.
- There has been a significant drop of error rates in the Cohesion Policy field since the year 2000, from roughly 11 % in 2000 to 3 % in 2017;

159 (European Court of Auditors, 2010, p. 98); (Karakatsanis G., Weber M., 2016, pp. 173-175)

160 The individual Annual Reports contain a description of the audit approach underlying the audit work for the reference year

161 https://www.eca.europa.eu/en/Pages/AuditMethodology.aspx; The current version of the relevant "Financial and Compliance audit Manual" dates on September 2017, (European Court of Auditors, 2017e)

162 See also (European Parliament, Fact Sheets on the European Union, 2019b)

- For the entire programming period 2000-2006, the Annual Reports estimate an error rate of more than 5 %. Together with ancillary sources, a more precise estimate of the error rate is 11 %.
- In the programming period 2007-2013, when the AA were formally established, the error rate plunge from 11 % at the beginning to 6.8 % in 2013, which is a decline of more than 38 %.
  This is a clear indicator that the new governance framework with the AAs at the core of it, proved to be effective. The biggest drop was in from 2009 to 2010 (- 3.3 %), i.d. three years after the outset of the programming period. This was exactly the time, when the AAs became actually operational. This has two reasons:
    - First, the first years in the programming period the Member States still deals winds-up the "old" programming period and does not yet focus on projects to be supported under the current period. Accordingly, there are no material payment applications from the Member Stated to the Commission. This leads, in turn, to little or no material audit work of the AAs;
    - Since the AAs were first time officially set up in 20074-2013 period, the Member States purely needed time to create the administrative prerequisites to establish a new authority and to equip it with the necessary resources. Additionally, the AA needed to build the administrative capacity and to implement sound processes. All this needs some time.
- In the programming period 2014-2020, the error rate further decreased from 5.3 % at the beginning to currently 3 % in 2017, which is a decline of more than 43 %.
  This indicates that the governance framework with the AAs at the core of it has further strengthened. Moreover, a clear learning curve of the AAs can be assumed. The AAs internal processes have become established and there has been an intense interaction with the Commission. Audits of the ECA further contributed to the lessons learnt and to adapt the procedures and methodologies.
- The long-term trend in the error rates unambiguous show a further decline, so that the final goal to achieve an error rate below 2 % is realistic in the near future.

2.3.2 New assurance paradigm for post 2020 programming period– trend towards shifting more reliance to Member States capacity

A factor that might affect the work of the AAs in general is the stronger reliance on national management systems envisaged for the post 2020 programming period.

Under the term "enhanced proportionate arrangements", the Member States may deviate from the standard management and control procedures.

The managing authority may apply only national procedures to carry out management verifications. It is allowed not to meet the requirements of Article 68(1)(a) and Article 68(2) Proposal-CPR. In conclusion, if national procedures allow, the MA is free to conduct management verifications in general and if verifications are executed, to differ from the standard verification approach, which must be risk-based and proportionate to risks. Several questions remain: e.g.

- What criteria must national procedures meet?
- How can reliable results be achieved if the management verifications are not risk based?[163]

Overall, the benefits and simplification to be achieved from the proposed enhanced proportionate arrangements are not evident. Already the standard management and control framework establishes an environment, which requires risk based management verification. Hence, in an effective system, the checks and controls would in any case be the

163 In its opinion, the European Court of Auditors critically assessed the enhanced proportional arrangements, also with a view on the managing authorities. As the managing authorities are not in the focus of this paper, reference is made to the opinion. (European Court of Auditors, 2018e, pp. 54-55)

bare minimum. There is a risk that the enhanced proportionate arrangements will constitute more of a complication rather than a simplification.

This in turn, affects also the work of the AA, as the AA must assess it in its systems audits based on the key requirements defined in Annex X Proposal-CPR. In particular, the AA is faced with the challenge of giving an opinion on key requirement 4 "Appropriate management verifications …" if there are no minimum standards set. The only reference point the AA has at hand is the requirement that the MCS must function effectively (Article 63(3) Proposal-CPR). Furthermore, this would inevitably lead to different levels of assurance among the Member States.

Additionally, the AA may limit its audit activity (audits of operations) to a statistical sample of 30 sampling units (Article 77(b) Proposal-CPR). It is astonishing that a fixed sample size is proposed, since with a statistical sampling method, the sample size is calculated in such a way that a certain desired level of precision may be achieved. Consequently, technical factors like the confidence level or the standard deviation of errors determine the sample size.[164] For the programming periods 2007-2013 and 2014-2020, a sample size of 30 items was the minimum, not the maximum, when applying statistical sampling.[165]

To what degree the Member State's limited participation in the enhanced cooperation on the European Public Prosecutor's Office may contribute to the Commission's assessment of the effective functioning of the programme's MCS as stipulated in Article 78(1) Proposal-CPR remains doubtful. In any case, it transfers a high degree of discretion to the Commission in taking its decision on the "enhanced proportionate arrangements.

Chapter 3 Typology and specificities of Member States' financial instruments as a delivery mechanism in the Cohesion Policy – a challenging field of audit for the audit authorities

3.1 Introduction

In times of shrinking public budgets, alternative forms of public support other than non-repayable grants have come under the spotlight. This is particularly true for Cohesion Policy, where the use of financial instruments (FIs) has grown steadily over the last two programming periods, both in terms of the absolute numbers of instruments and resources, with a further increment in terms of value, and of the percentage of the total budget available for the current 2014-2020 period. But the generally accepted advantages of repayable instruments over grants can be diluted by severe shortcomings in how FIs have been implemented.[166]

This chapter deals with the field of financial instruments (FI)[167] as delivery mechanism in the Cohesion Policy. As this kind of implementation tool has not been an everyday business for the national implementation nor national control bodies, FIs considered as problematic and challenging area. This is particular true for national audit authorities, who have to cover this area.[168] The implementation of FIs' follows a separate governance structure different from the one of grants.[169]

164 See for example (European Commission, 2017a, pp. 15-36)
165 Ibid, pp. 198, 200
166 (Bode, M., 2015, p. 173); (Bode, M., 2016, p. 179)
167 The terms "financial instruments" and "financial engineering instruments" used synonymously
168 (Bode, 2017, pp. 283-286)
169 (Bode, 2017)

3.2 Characteristics of financial instruments in the Cohesion Policy

3.2.1 Definition of financial instruments

When talking about financial instruments, the subject matter has first to be shaped and defined. Since the notion of "financial instruments" is not a universal one, it has to be defined in the relevant context. Until the revision of the financial regulation in 2012, there was no common definition for FIs applicable to the EU budget.[170] However, different definitions exist in the sectoral provisions. In this sense, the notion of financial instruments under Cohesion Policy is very much limited to three very basic designs, whereas International Public Sector Accounting Standards do not restrict the design and also include hybrid structures.

For the 2014-2020 programming period, the Financial Regulation[171] provides a uniform definition of FIs applicable to all budgetary areas. Under Article 2 (p) FR (2012), Member States are widely free in how they structure their FIs, as they can in principle, adopt a wide spectrum of designs: "(…) 'financial instruments' means Union measures of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants; (…)".

3.2.2 Advantages and development of financial instruments as a delivery tool of public policies

Financial instruments possess several aspects, which might put them into an advantage compared to grants. Besides the advantages often attributed to FIs as compared with grants, such as their leverage effect and the revolving nature of FI endowments, their delivery structures contribute towards strengthening public sector capacity and knowledge, which can in turn help to make the allocation of public resources more efficient and effective. Moreover, these instruments have a behavioural impact on the recipients, since they provide a variety of incentives for better performance, including greater financial discipline in the supported projects[172]. However, there are also scholars objecting the incentivising effect of FIs compared to grants.[173]

For the period to 2020, there is still felt to be a material lack of capital investment in the EU[174] and the past level of FI utilization still does not meet the ambitious policy objective of an overall doubling of the volume of FIs set out in the Investment Plan for Europe.[175] Also the European Council concluded that the use of FIs needed to be doubled (e.g. for SMEs) to cope with economic distress.[176] Based on the indications provided so far via their obligatory reporting (annual reporting on the use of FIs), the Member States plan to deploy around 21 billion euros in ERDF, ESF, and Cohesion funds through FIs, which represents an increase of more than two percent of the OP contribution

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170 (European Court of Auditors, 2016b, pp. 16, 89)

171 FR (2012)

172 See for example (European Court of Auditors, 2016b, p. 16); (Dudka, H.; Lancry, R., 2014, pp. 25-28); (Bode, M., 2015, p. 173); (European Commission; EIB, 2015, p. 3); (Sant, 2014, pp. 291-292); (Wernerus, D.; Rusanescu, R., 2014, p. 193); (Wishlade, 2018, pp. 90-91)

173 (Nicolaides, When to Use Financial Instruments Instead of Grants, 2018b)

174 (Sant, 2014, pp. 289-290)

175 (European Commission, 2014f, p. 4); (European Commission-DG Regio, 2016, p. 15)

176 See the conclusions of the European Council (24/25 October 2013): "The programming negotiations of the European Structural and Investment Funds (ESIF) should be used to significantly increase the overall EU support from these funds to leverage-based financial instruments for SMEs in 2014-2020, while at least doubling support in countries where conditions remain tight. These instruments should be designed in a way which limits market fragmentation, ensures high leverage effects and quick uptake by the SMEs. This will help concentrate the funds adequately and expand the volume of new loans to SMEs." (European Council, 2013, p. 10); (Wernerus, D.; Rusanescu, R., 2014, p. 193)

allocated to FI, to over six percent for 2014-2020.[177] Taking the 68.8% average EU contribution to the total endowments for these instruments for the 2007-2013 programming period as a reference, the 21 billion euros amount from the EU budget might correspond to approximately 31 billion euros in total allocations (not taking account of additional national and private financing that might be provided for the funds outside the ESIF programmes).[178]

3.2.3 Implementation options

3.2.3.1 Geographical implementation

3.2.3.1.1 Regional focus results in scattering effects for 2007-2013 programming period

Since the economic territory of each Member State is divided into territorial units on the basis of the "nomenclature of territorial units for statistics" (NUTS) the operational programmes themselves must be drawn up at NUTS level 1 or NUTS level 2, and, for operational programs under the European territorial cooperation objective, at NUTS level 3 (Article 35 GR). From regulatory definitions, it can be deduced that FIs can only be set up at national or regional level within the boundaries of one OP.[179] For the holding fund structure, Article 44 GR clearly states that implementation is explicitly limited to the Member State (national) level or the MA (regional) level.

Although this strict geographical focus is a major characteristic of Cohesion Policy, it does not necessarily follow economic logic and can be regarded as one the main impediments to creating a critical mass of financial instruments with a real economic impact, since it makes it challenging for fund managers to identify projects that are worth financing[180].

The scattering effect of this system is mirrored in the high number of FIs set up during the 2007-2013 programming period. In total, at closure of the programming period (31 March 2017), 1 058 FIs had been set up (including 77 holding funds and 981 specific funds) by the Member States.[181] This represents a steady increase in the number of implemented instruments since the beginning of the reporting period and implies that the vast majority of the regions established multiple FIs.

The average fund size at closure for the ERDF FIs is 15.53 million euros and, for ESF FIs 14.77 million euros.[182] In contrast, by the end of 2014, according to data reported by the Commission, the contribution from the EU budget to the centrally-managed funds, which theoretically cover all Member States, was up to 1.2 billion euros. Private equity funds operate, on average, with 150-500 million euros.[183]

Apart from the low level of endowment in the FIs, the steady increase in the number of FIs, especially in the last part of the programming period, raises the question of what impact could be expected from such a late implementation on the ground. The slow development of the disbursement rates reflects the Member States' difficulties in properly accommodating the allocated funds. At the end of the eligibility period for the 2004-2013 programming period (31 December 2015), a mere 75 % of the fund endowment had actually been disbursed to the final recipients. Although there was some progress in the disbursement rates, only 16 out of 26 Member States achieved disbursement rates of

177 (European Commission-DG Regio, 2018b, p. 7) (European Commission-DG Regio, 2016, pp. 17, 77); (Wishlade, F.; Michie, R., 2016, p. 208)
178 (European Court of Auditors, 2016b, p. 22)
179 (European Commission, 2014f, p. 2)
180 (Bode, M., 2015, p. 182)
181 Based on the amounts paid to FI. (European Commission-DG Regio-DG Empl, 2017, pp. 8, 23)
182 Ibid, p. 64
183 (European Court of Auditors, 2016b, p. 38)

more than 90 %. The majority of the Member States only achieved rates of between 80 % and 90 % (20 Member States).[184] At closure of the programming period (31 March 2017), the overall disbursement rate reached nearly 93 %.

A further disadvantage of low endowments is that it is increasingly difficult to use economies of scale and efficiency gains. The lower the fund endowments are, the less the overhead costs and risks associated with investments, guarantees and loans can be spread over a sufficiently large number of final beneficiaries. In other words, the FI lacks the critical mass to be implemented efficiently.[185] The fact that this problem actually exists was unveiled in a study prepared in 2013 at the request of the Commission and the EIB, which identified subcritical fund endowments for a high number of FIs[186].

3.2.3.1.2 Changes in the 2014-2020 programming period

For the 2014-2020 programming period, the intervention logic still follows a territorial approach, but within a more thematically-oriented programming framework, which enables the Member States to have greater flexibility. For instance, within a thematically consistent integrated approach, the operational programme can concern more than one category of region and can combine one or more complementary investment priorities from the ERDF, the Cohesion Fund and the ESF under one thematic objective (Article 96(1) CPR).

Moreover, the implementation options have been broadened out from just the regional and national levels to a transnational or cross-border level and an EU level (Article 38(1) CPR). In order to stimulate the Member States to create FIs with more critical mass, the CPR provides financial incentives. If a whole priority axis is delivered through FIs, an incentive of a 10 % top-up of the maximum co-financing rate can be applied (Article 120(5) CPR). If a whole priority axis is delivered through FIs and these are set up at the EU level and managed directly or indirectly by the Commission, a 100 % co-financing rate for the whole priority axis is possible (Article 120(7) CPR).

The latest available implementation figures for the 2014-2020 programming period reflecting the situation as at 31 December 2017, shows a trend towards a consolidation and rationalisation of the number of FIs. Except Cyprus, Ireland, Denmark and Luxembourg, all Member States uses FIs in the as delivery mechanism in the context of its Cohesion Policy. Whereas the contribution the Member States committed to FI via its OPs, have increased from 16 967.8 million euros (at closure for 2007-2013 programming period) to 17 892.1 million euros (as at 31 December 2017 for the 2014-2020 programming period),[187] the number of FIs decreased by 50 % from 1 058 to 534 at the end of 2017. In consequence, the average fund size increased to 34.55 million euros, which is more than doubling compared to closure of 2007-2013 period, though far from market benchmarks.[188]

Generally, the legislature's attempt to create financial instruments with a potentially higher impact is very positive. However, the more regions and bodies that are involved, the more complex the legal structure could be, which creates risks in terms of delays and inefficiency[189]. An extension of the of-the-shelf FIs taking into consideration the particularities of all implementation options would mitigate these risks.

184 (European Commission-DG Regio-DG Empl, 2016, p. 66)
185 (Bode, M., 2015, p. 182); (European Court of Auditors, 2016b, p. 38)
186 (Metis GmbH; EPRC, 2013, pp. 78-79); (European Court of Auditors, 2012a, pp. 29-31)
187 Only ERDF, CF, and ESF is considered in these figures
188 Calculations based on detailed information in (European Commission-DG Regio, 2018b)
189 (European Court of Auditors, 2016b, p. 39)

3.2.3.2 Selection of financial intermediaries

3.2.3.2.1 Rules on the selection of financial intermediaries are complex and not fully clear for the 2007-2013 programming period

FIs can be set up as standalone funds or as sub-funds of a holding fund, later referred to as specific funds. A holding fund, sometimes also referred to as a 'fund of funds', is a fund set up with the objective of managing different types of instruments. It also allows contributions to be made from one or more OPs to one or more FIs.[190]

For the 2007-2013 programming period, the legal basis does not set specific provisions for selecting funds other than holding funds. However, it is assumed that the same principles and obligations must be applied for implementation on the second level, such as the holding fund's selection of sub funds, financial intermediaries or any other vehicles for the implementation of repayable investments, and the managers of the financial engineering instrument.[191]

From the structure of Article 44 GR, it becomes apparent that, as a first step, the managing authorities must assess whether their contribution to a holding fund is a public service contract. If the conditions of a public service contract are applicable, public procurement rules need to be respected. Only if the contribution does not qualify as a public service contract alternative implementation options can be applied.

To evaluate the nature of a contract, Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004[192] is the main reference point for the 2007-2013 programming period. Article 44 GR must be understood as filling the gap in the rules where public procurement law is not applicable. Only in these circumstances can a financial institution be directly chosen without a call for proposals. But it is hard to imagine what other services a fund manager could perform. If the law aimed to highlight cases where public procurement legislation does not need to be respected (in-house awards or inter-administrative cooperation), it provides no added value as it does not codify the conditions defined by case law.

The complex rules on the selection of financial intermediaries are a further example of how the legal framework creates uncertainty and gold plates established rules.

3.2.3.2.2 Changes in the 2014-2020 programming period

The provisions on the selection of bodies implementing FIs were clarified in the 2014-2020 legal framework.

As a general rule, Article 38(4) CPR further states that the bodies involved should ensure compliance with the applicable laws, including the rules covering the ESI Funds, state aid and public procurement, and the relevant standards and applicable legislation on the prevention of money laundering and the fight against terrorism and tax fraud.

As regards the applicable public procurement provisions for contracts with an estimated value above the respective thresholds, Directive 2014/24/EU[193] should be the main reference point for the managing authorities for the 2014-2020 programming period, since its content has to be incorporated into national law by 18 April 2016 at the latest.

A clear advantage of the new rules is that they increase clarity regarding the selection of EIB-group bodies as financial intermediaries. The restricting condition (non-qualification as a public service contract) for direct awards to the

190 (Bode, M., 2016, p. 182)
191 (European Commission-DG Regio, 2012, pp. 5, 7)
192 (European Parliament; Council, 2004)
193 (European Parliament; Council, 2014)

EIB/EIF has been abandoned. The managing authorities may now conclude mandates with regard to the implementation of FIs directly with the EIB/EIF, i.e. without a competitive process.[194]

The CPR introduced an exception for international financial institutions, without further explaining what this means. According to a Commission Note "International financial institutions may be defined as financial institutions set up by at least two countries by intergovernmental agreements to provide financial support for economic and social development activities. Their owners or shareholders are generally national governments, but may also be other international institutions and/or other organisations". When applying this definition, international financial institutions are also governed by primary law between States. Secondary public procurement law should not be pertinent, mutatis mutandis, which enables the MA to entrust such institutions directly with implementation tasks, provided that the Member State is a member of the international financial institution.[195]

Whereas the CPR clarifies rules on the involvement of the EIB-group and international financial institutions, the CDR (2014) creates confusion. When appointing in-house entities or an international financial institution (except the EIB and the EIF), or when entering into inter-administrative cooperation, the managing authorities must comply with the selection and award criteria listed in Article 7(1) and (2) CDR (2014). At first glance, setting the selection and award criteria that need to be considered by the managing authority when contracting services is positive, as they can ensure a certain standard in the selection phase. Meeting selection criteria aims to guarantee a certain minimum standard for the execution of the procured services and is therefore reasonable, even for direct awards. However, if a selection is not carried out on a competitive basis and the services are directly awarded, compliance with the award criteria does not make sense, as there is basically no selection choice. Against this backdrop, the obligation to follow award criteria for the aforementioned potential contractors could only be interpreted as an internal reference point for the managing authority if there are a number of international financial institutions, in-house entities or inter-administrative cooperation possibilities from which to choose. However, this approach is only fully plausible if the managing authority is aware of the fund management details because, only then could the award criteria be evaluated and the different potential contractors ranked.

3.2.3.3 Use of existing FIs

3.2.3.3.1 No rules on the use of existing FIs in the 2007-2013 programming period

In the legal framework for the 2007-2013 programming period, there are no explicit provisions as to whether existing FIs/or legal entities could be used. From the point of view of the intervention logic, this option should be possible if the instrument, which is ultimately only a vehicle for conveying funds to a target market, serves the objectives of the OP. Nevertheless, the fact that an existing instrument could be selected does not permit an exception to be made to the selection options set out in Article 44 GR and the national and EU public procurement rules (see above).

3.2.3.3.2 Changes in the 2014-2020 programming period

For the 2014-2020 programming period, the CPR explicitly grants the MA the opportunity to invest in an existing or newly created FI (Article 38(3) (b) CPR). These may include FIs in the form of direct loans or guarantees without the funds being managed by a financial intermediary (Article 38(4)(c) CPR). The main conditions for this implementation option are that the existing investment vehicles must comply with the objective of supporting

194 (European Commission, 2016c, pp. 7-8)

195 Ibid, pp. 8-9

investment activities and that the final recipients meet with the investment priorities and the priority axis from which ESI fund resources are provided (Article 38(4)(a) CPR).[196]

Even considering that the amounts and purpose of such direct investments must be limited to the amounts needed to implement new investments in accordance with the provisions of Article 37 CPR, and that this form of support and its amount and purpose must be strictly in line with the findings and conclusions of the ex-ante assessment,[197] it is questionable whether this approach could avoid allocation of funds to an ineffective existing investment vehicle.

Here again, it must be stressed that the managing authority is not released from its obligations to comply with, for example, national and EU public procurement rules and state aid rules when selecting FIs, even existing ones.[198] Although this cannot be directly derived from the regulations, the Commission regards the recapitalisation of existing legal entities, or the provision of constitutive share capital to legal entities that have been set up with a broader scope not to be in line with the policy objectives and legal framework set out in Article 38(4) CPR.[199]

The explicit rules on the use of existing instruments for the relevant programming period create higher legal certainty, even though they bear high potential for future controversial discussions and do not guarantee effective implementation. In conclusion, it is hard to believe that this implementation option will be used intensively by the Member States.

3.2.3.4 Implementation under direct management

3.2.3.4.1 No option to implement funds under direct management in the 2007-2013 programming period

The regulatory framework for the 2007-2013 period clearly followed the principle of shared management. According to Article 14(1) GR, the European Union budget allocated to the structural funds and the cohesion fund must be implemented within the framework of shared management between the Member States and the Commission, in accordance with paragraph (b) of Article 53 FR (2006). This regulation does not offer the option of implementation under direct management via an EU-level FI. The idea of shared management becomes more apparent in Article 43(2) CIR (2006), where it is stated that the Commission may not become a co-financing partner or shareholder in an FI.

3.2.3.4.2 Changes in the 2014-2020 programming period

The continued validity of the principle of shared management in the 2014-2020 period is set out in Article 4(7) CPR. There is no exception to this principle with regard to FIs in this Article. However, Article 38(1)(a) CPR allows for the provision of a financial contribution towards financial instruments set up at EU level, managed directly or indirectly by the Commission. This possibility could have a number of positive impacts, e.g. the pooling of funds can build up significant critical mass to make a higher impact and economies of scale.

196 (European Commission, 2014f, p. 11)
197 (European Commission, 2014f, p. 11)
198 Article 38 (4) CPR
199 (European Commission, 2014f, p. 11)

In order to promote this particular form of implementation and support the managing authorities, further guidance from the Commission is strongly needed. Representatives of financial intermediaries continue to criticize the lack of clarity on how to implement financial instruments under the new legal framework.[200]

3.2.3.5 Combination of funds

3.2.3.5.1 Limited possibilities to combine funds in the 2007-2013 programming period

The Regulation makes it possible to obtain contributions to the FIs from more than one OP or from more than one priority axis to the same FI.[201] However, in accordance with Article 44 GR, only structural funds may finance expenditure for an operation consisting of contributions to support FIs. Since the definition of structural funds in Article 1 GR only includes the ERDF and the ESF, FIs cannot receive contributions from the Cohesion Fund.

Article 43(6) CIR (2006) makes it possible to combine FIs and grants or other assistance from an OP at the level of operations. Consequently, where an OP provides grant assistance from either of the Structural Funds or from the Cohesion Fund as well as contributions to FIs from the Structural Funds, final recipients may be simultaneously supported by (i) grants from the Structural Funds or from the Cohesion Fund and (ii) investments from FIs co-financed by the Structural Funds

3.2.3.5.2 Changes in the 2014-2020 programming period

The conditions for combining funds materially changed in the 2014-2020 legal provisions. In order to provide a sound basis for deciding to combine various forms of support within the financial instrument operation and estimating the ESIF programme contribution for these forms of support, the decision must be backed by an *ex-ante* assessment (Article 37(2)(a)(e) CPR).

The direct relationship between the different funding sources and the financial instrument is a key criterion for determining whether a combination of assistance makes up two separate operations or takes place within one single operation.

The purpose of the pooling of the support should be to facilitate and enhance the implementation of the financial instrument concerned.[202] In particular, the European Fund for Strategic Investments (EFSI)[203] could provide additional capital to ESI fund FIs. These greater endowments could trigger additional resources, which would then enable the Member State to finance bigger investments. Furthermore, the MA might save the national budget since, where the additional co-investments are neither directly nor indirectly supported by the EU budget, but are directly linked to the ESI Funds intervention, they can be treated as national co-financing for the ESI Fund programme as long as they are paid out to final recipients under the applicable rules (i.e. the CPR, the relevant ESI Fund programme, national eligibility rules and the funding agreement).[204]

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200 (European Court of Auditors, 2016b, p. 39); In the workshop "Financial Instruments under ESIF (2014-2020) – Public banks sharing experiences and best practices", held on 12.10.2016 in the framework of the "European Week of Regions and Cities", representatives of the European Association of Public Banks expressed similar concerns about the lack of detailed information on how to implement FIs

201 (European Commission-DG Regio, 2012, p. 10)

202 Ibid, p. 2

203 (European Parliament; Council, 2015)

204 (European Commission, 2016d, p. 11)

It remains to be seen whether this greater flexibility in combining different programme contributions, different funds and different forms of public support will actually be accepted by the Member States. For 2007-2013, the legal framework (including guidance notes and Commission decisions) on this issue was ambiguous and partly contradictory. The main aspects have been clarified in the meantime. However, the Commission's *Guidance on Combination of support*[205] is of limited value when it comes to practical implementation on the ground. Against this backdrop, it is questionable whether the combination of FIs with other forms of support will actually be used by the Member States, since the combination of different sources remains a challenging administrative task with a considerable accounting and financial management burden.

3.2.4 Scope of intervention and eligible expenditure

3.2.4.1 Target groups of intervention

3.2.4.1.1 Limited group of intervention targets in the 2007-2013 programming period

The scope of the use of FIs in the 2007-2013 programming period was limited to the following beneficiaries/projects:

- Businesses, primarily SMEs;
- Urban development projects;
- Energy efficiency and the use of renewable energy in buildings

3.2.4.1.2 Changes in the 2014-2020 programming period

In contrast to the 2007-2013 programming period, the regulation is non-prescriptive regarding sectors, beneficiaries, types of project and activities to be supported. The scope for using FIs has been enlarged and expanded to cover all funds as well as all thematic objectives and priorities in the OP and all kinds of beneficiaries. This extended use of FIs is necessary to help Cohesion Policy contribute towards overcoming Europe's investment gap and finance significant levels of projects in the Member States and their regions so as to enable them to recover from the crisis and strengthen their global competitiveness.[206]

3.2.4.2 Targeted projects

3.2.4.2.1 Eligible projects adequately defined for 2007-2013 programming period

In order to qualify as an "operation" under GR, a project or group of projects must allow the goals of the priority axis to which they relate (Article 2(3) GR) to be achieved. In order to be in line with the objectives of the Cohesion Policy laid down in Article 3 GR, the projects must enhance growth, competitiveness, employment and social inclusion. Moreover, the projects should increase and improve the quality of investment in physical and human capital and the development of innovation and the knowledge society (convergence regions).

205 (European Commission, 2015g)

206 In 2016 the investment in Europe is still 15 % below pre-crisis level, (European Commission, 2016d, p. 5)

3.2.4.2.2 Changes in the 2014-2020 programming period

There is basically no material change in the eligible target projects in the 2014-2020 programming period compared to the 2007-2013 period. Although the provisions on target projects for enterprises in the 2014-2020 period appear to be more exhaustive, they simply specify opportunities, which could already have been aggregated under the undertakings eligible under previous regulatory framework.

3.2.4.3 General eligibility rules for expenditure

3.2.4.3.1 Legality of extended eligibility period questionable for 2007-2013 programming period

The legal texts for the 2007-2013 programming period do not contain special eligibility rules for expenditure incurred by the final recipient of the financial support. Thus, the general eligibility rules apply. As a rule of thumb, the provisions on the eligibility of expenditure must be laid down at the national level, subject to the exceptions envisaged in the specific regulations for each Fund (Article 56(4) GR). Certain general eligibility rules are governed by Article 56(1)-(3) GR, Article 7 ERDF Reg 2006 and Article 11 ESF Reg 2006[207].

On 30.04.2015, the Commission published revised guidelines on closure, which seem to extend the eligibility period for FI related payments to 31 March 2017[208]. Since the eligibility period is clearly defined in Article 56(1) GR, it is more than questionable whether a Commission guideline that is regarded as belonging to "soft law" and not legally binding for Member States, can alter rules that have been run through the legislative procedure in the European Parliament and the Council or whether it rather undermines their authority. The Commission's argument that Article 78(6) GR brings FI-related expenditure outside the scope of the eligibility period set out in Article 56(1) GR[209] is without a firm foundation, given that Article 78(6) GR simply sets out the expenditure which may be considered eligible with regard to FIs, but does not alter the eligibility period. The same view is shared by the European Court of Auditors, which has repeatedly pointed this legal issue out and will regard all disbursements made after 31 December 2015 as irregular.[210]

3.2.4.3.2 Changes in the 2014-2020 programming period

In the 2014-2020 programming period, Title IV CPR contains general eligibility rules for expenditure specifically for projects financed via FIs. Nevertheless, the general eligibility rules need to be respected. Here again, as a general rule, as laid down in Article 65(1) CPR, the provisions on the eligibility of expenditure must be laid down at the national level subject to the exceptions provided for in the specific regulations for each Fund.

Finally, there have been no noteworthy changes concerning the general eligibility rules for expenditure occurring at the level of the final recipient supported by financial instruments.

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207 Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund and repealing Regulation (EC) No 1784/1999 (ESF Regulation 2006, ESF Reg 2006), (European Parliament; Council, 2006b)

208 (European Commission, 2015d, p. 8 Annex I)

209 (European Court of Auditors, 2016a, p. 183 Commission's reply)

210 For example (European Court of Auditors, 2016a, p. 183); (European Court of Auditors, 2016b, p. 33)

3.2.4.4 Eligible expenditure at closure of the programming period

3.2.4.4.1 The ambiguity of eligibility rules for 2007-2013 programming period

At the partial or final closure of an OP, according to Article 78(6) GR, eligible expenditure comprises:

- any payments for investment from the funds;
- any guarantees provided, including amounts committed as guarantees by guarantee funds;
- eligible management costs or fees.

In its interpretative note of February 2012[211], the Commission clarifies that if the underlying (guaranteed) loans might not yet have come to their expiry date for repayment at the date of closure, the amounts committed as guarantees are classified as eligible expenditure. For this scenario, the law sets no limits for its application, which means that there may be a risk of using this rule as a tool to circumvent the threat of decommitment due to non-absorption.

3.2.4.4.2 Changes in the 2014-2020 programming period

For the 2014-2020 programming period, more elements qualify as eligible expenditure. The list clearly makes a case for more detailed rules. In particular, the provisions on capitalised costs risk being misapplied since the rules are not sufficiently clear. The issues on the governance structure related to the application of the exception for equity-based instruments are similar to the ones for the capitalised cost parts, as the responsibilities for monitoring compliance with the legal specifications after the closure of the OP are blurred[212].

With regard to the eligibility of guarantees in the 2014-2020 programming period, the same two cases apply for when guarantees qualify as eligible expenditure, namely:[213]

- the underlying (guaranteed) loans have already reached their expiry date of repayment at the date of closure and
- the underlying (guaranteed) loans have not yet reached their expiry date of repayment at the date of closure.

For the second case above, Art. 42(1)(b) CPR is ambiguous, as it says: "... in order to honour possible guarantee calls for losses, calculated on the basis of a prudent ex ante risk assessment". It is not quite clear how this notion should be understood and whether also guarantees on risk-bearing instruments that will be committed after the closure of the OP are deemed as eligible. Taking the Commission guidance into consideration, the eligibility rule can be interpreted in the sense that investments in final recipients which are collateralised must have effectively been disbursed before the end of the eligibility period.[214] How this notion should be understood is not quite clear.

3.2.4.5 Capitalized interest rates

3.2.4.5.1 Legal uncertainty on the eligibility of capitalized interest rates

Neither GR nor CIR (2006) envisage the possibility of considering capitalised interest rate subsidies or guarantee fee subsidies as eligible expenditure. Furthermore, nor does the Commission's interpretative note of February 2012 (COCOF 10-0014-05) cover this possibility.

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211 (European Commission-DG Regio, 2012, p. 21)

212 See sections 3.2.4.5 and 3.2.4.6

213 Article 42 (1) (b) CPR

214 (European Commission, 2014f, p. 14)

However, the Commission opened the door for this kind of expenditure in its Commission Decisions (C(2015)2771[215]) on closure for the 2007-2013 period. The Commission decision is silent as to the details of the calculations (e.g. discounting rates, maximum time span), which are the real critical issues when actually applying such approaches.

The acceptance of capitalised fees/costs as eligible expenditure cannot be based on Article 56(1) GR, which clearly sets the eligibility period for actual paid expenditure at 31 December 2015. In conclusion, there is a high risk associated with the inclusion of capitalized interest rates, either because they could be deemed as ineligible *ex-post*, or because the Member States apply the calculation wrongly because of the lack of concrete guidance.

3.2.4.5.2 Changes in the 2014-2020 programming period

This situation has changed for the 2014-2020 programming period, insofar as the CPR explicitly includes capitalised interest rate subsidies or guarantee fee subsidies as eligible expenditure at closure (Article 42(1)(c) CPR). The CPR sets 10 years after the eligibility period as a maximum time span which can be considered for the calculation of the capitalised amounts. The payment of the calculated discounted amounts paid into an escrow account constitutes a primary condition for qualification as eligible expenditure at closure. Further explanations concerning the variables for the calculation are not available.

The CPR does not contain any specifications regarding the concrete management and control procedures for monitoring compliance with the provisions of Article 42(1)(c) CPR after the closure of the OP. The CPR merely states, in Article 45, that Member States must adopt the necessary measures to ensure alignment with the rules on the legacy. In the same way as in the 2007-2013 period, the mandate of the authorities concerned ends at the closure of the relevant period. Therefore, it is unclear who is responsible for taking care of the legacy.

In summary, in both programming periods, capitalised interest rate subsidies and guarantee fee subsidies could be considered as eligible expenditure at closure. But the legal basis differs: for 2007-2013, a Commission decision was the (questionable) basis; for 2014-2020, a binding regulation was the legal basis. Despite this improvement in legal certainty, there is no coverage of major issues regarding the computation of capitalised amounts and the governance configuration to ensure fiduciary deposits, either in the implementing regulations or in the Commission's guidance. This paves the way for unpredictable future problems. In either case, the price for including capitalized interests in eligible expenditure at closure is highly uncertain.

3.2.4.6 Capitalised management costs/fees

A novelty for the 2014-2020 programming period is the possibility of including capitalised management costs or fees in the expenditure eligible at closure.

Article 14 of CDR (2014) sets a specific threshold for eligible capitalised management costs and fees. In order to use this capitalised cost part, it is evident that a detailed prediction has to be made as to when the repayments will take place. Article 14(1) of CDR (2014) only requests a calculation at the end of the eligibility period. However, it becomes much more complex if the repayment does not enter into force as predicted, e.g. because of defaults. From the regulations, there can be no requirement for an amendment of the calculation derived, which could lead to artificial figures that do not reflect reality. An additional impediment, as already described above, is the regulations' silence on the governance structure after closure of the OP.

215 (European Commission, 2015d, p. 8 Annex I)

The rule can be regarded as a last possibility for the Member States to be compensated for management costs and fees incurred if the underlying investment defaults. The EU budget already covers losses that the Member State experiences with failing investments. Article 42(2) CPR now reflects an additional transfer of risk from the Member State to the EU budget since it not only subsidises defaulting investments, but also management, which failed to avoid such losses. This is even more controversial, as the level of the management costs/fees in Cohesion Policy is generally regarded as high and above the benchmark in the private sector.[216]

3.2.4.7 Working capital

3.2.4.7.1 Legal uncertainty on the eligibility of working capital in the 2007-2013 programming period

Working capital is commonly understood to be the difference between the current assets and current liabilities of an enterprise. Taking the remarks under paragraph 3.2.4.2 into consideration, it is obvious that financing the simple operation of beneficiaries' businesses does not comply with the objectives of Cohesion Policy. However, the 2007-2013 legislative framework did not refer explicitly to working capital. Until 2011, an indirect restriction on the eligibility of working capital stemmed from the provisions on eligible stages of enterprises under Article 45 CIR (2006), which limits intervention by FIs in the stages of establishment, the early stages, including seed capital, or expansion[217]. In December 2011, amendments to the implementing Regulation removed this notion[218].

In the interpretative note of February 2012, the Commission tried to clear up the uncertainty and considered that the financing of working capital that is not associated with a plan to create or expand an enterprise should not be supported through financial instruments.[219]

According to the wording, setting-up and expansion only represent examples of normal business activities. This leads to the question of what other activities can be covered under a business' normal activities. Since the term 'expansion capital' is ambiguous and there are exceptions for the use of working capital, the eligibility conditions for working capital were not clear and caused considerable confusion among the Member States. In extreme cases, this uncertainty discouraged financial intermediaries from providing working capital support on the ground.[220]

3.2.4.7.2 Changes in the 2014-2020 programming period

The rules on working capital have been incorporated into the 2014-2020 legal texts.

Although the legal framework touches on the working capital, it has not improved legal certainty in this matter. The phrasing of Article 37(4) CPR is not clear and, in particular, the eligible targets of financing the general activities of an enterprise and/or realisation of new projects could be interpreted in the sense that financing of working capital does need to be linked to an investment. Even the Commission Guidance note does not abolish the ambiguity regarding the eligibility of working capital, as it essentially copied the legal text.[221]

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216 (European Court of Auditors, 2016b, pp. 67-69)
217 See Article 45 of Commission Regulation (EC) No 1828/2006, version of 15.02.2007
218 Commission Regulation (EC) No 1828/2006, with the 2011 amendments
219 (European Commission-DG Regio, 2012, p. 18)
220 (European Court of Auditors, 2012a, p. 26)
221 (European Commission, 2015e, pp. 3-5)

In accordance with settled case-law, it is necessary to consider the context and the objectives of the CPR. Therefore, ESIF programmes' support to enterprises delivered through financial instruments has to target one of the seven categories identified by Article 37(4) CPR: the establishment of new enterprises, early stage-capital (seed capital and start-up capital), expansion capital, capital for the strengthening of the general activities of an enterprise, capital for the realisation of new projects, capital for the penetration of new markets or capital for new developments by existing enterprises. Even though some of those categories are broad, it seems to have been the will of the legislator. It results from this wording that those are only examples where working capital can be included as part of the support provided and that a case by case analysis would be required in order to establish whether a support project is eligible.

However, if case law is needed to interpret the regulations, the reluctance of managing authorities and financial intermediaries to finance working capital are expected to continue. This is particularly deplorable as the shortage of working capital can lead to liquidity problems, which may ultimately lead to bankruptcy. Sufficient working capital is the basis for any prosperous business and future investments. This area should therefore not be ignored by FIs.

3.2.5 Payments of EU contributions to financial instruments

3.2.5.1 Possibility of frontloading to circumvent decommitment in 2007-2013 programming period

For the 2007-2013 programming period, Article 78(6) GR enabled the endowment of a FI to be detached from the actual financial support provided by the FI to the final beneficiaries during the implementation of the OP. This means that excessive frontloading was used to circumvent the n+2 rule[222] for decommitment, which aims to speed up the use of the Structural Funds by Member States[223]. The low disbursement rates reflect this problem very well.[224]

3.2.5.2 Changes in the 2014-2020 programming period

In theory, frontloading has been very limited in the current programming period due to the introduction of staggered payments (Article 41(1) CPR). If the fund endowment has been realistically determined on the basis of a detailed *ex-ante* assessment, low disbursement rates should therefore be far less common during the 2014-2020 period.[225]

Without diluting the advantages of a limitation of excessive frontloading, there are also some critical aspects related to a strict phased-payment regime that are worth mentioning. For instance, these limitations could prevent financial intermediaries from grasping higher volume investment options, since the unused funds available for investments might be very low.[226] The strict payment rules may also have implications for flexibility in implementing FIs, especially if economic conditions change.

3.2.6 Interim conclusion

The legal framework for the current programming period 2014-2020 clearly shows an attempt to increase legal certainty as the majority of the rules contained in the Commission's guidelines have been transformed from "soft law" to "hard law" by being incorporated into the CPR and delegated and implemented acts. On the one hand, this

222 Article 93(1) GR

223 (European Court of Auditors, 2016b, pp. 31-32)

224 See also paragraph Possibility of frontloading to circumvent decommitment in 2007-2013 programming period3.2.5.1 below, where the shortcomings are described in detail

225 Ibid, pp. 33-34; (Bode, M., 2015, p. 180)

226 (Bode, M., 2015, p. 181)

remedies and mitigates several of the weaknesses that emerged in the past. However, as a result, the rules have not just become more detailed, they have also become much more complex. Moreover, they are spread over different legal sources. Although blurred past rules may be clarified, a smooth and legally certain implementation on the ground is not assured against this background. There are still a whole series of fuzzy and ambiguous provisions; sometimes not necessarily at first glance, but they become evident when detailed operational decisions need to be made. Whether this will demotivate managing authorities and financial intermediaries from using FIs remains to be seen. However, it is certain that complexity and uncertainty do not favour efficiency and effectiveness in the operation of this financial product under the ESI regime.

3.3 Governance structure in the area of financial instruments in the 2007-2013 and 2014-2020 programming period

3.3.1 Overview of the governance structure

Because of the trend toward a more intense use of FIs and its increasing size in monetary terms as a material share of OP commitments it is worth having a closer look at the provisions that shape the management and control system, ensuring the proper use of this repayable form of public support.

Alongside a stronger legally binding framework as shown above, there is the issue of an adequate management and control system to ensure compliance with the rules. This section focuses on the governance provisions relating to the MA and the AA.

3.3.2 The matter of timeliness of applicable rules

3.3.2.1 2007-2013 programming period

In order to have a level playing field, the rules to be followed and audited against ideally should be known from the outset. Legal certainty are a key factor make financial instruments a success and enable the managing and audit authorities to do their work effectively.

The legally binding framework for the use of FIs (even if not very detailed) was only partly set at the beginning of the programming period. Moreover, the legal requirements changed several times during the programming period.

Since the regulatory framework only contained basic specifications with little detail made it hard for Member States to properly implement FIs, the European Commission published several guidance notes to help the Member States interpret the regulations. The first two notes, which were issued from July 2007[227] and December 2008[228] were limited in scope. In February 2011[229], four years after the start of the programming period, the Commission issued a comprehensive and relevant guidance note on financial engineering instruments, which distinguishes the main types of financial instruments.[230] Against this backdrop, in such a changing legal environment, it is not easy for the national authorities to conduct an effective and coherent verification and audit work.

227 (European Commission-DG Regio-DG Empl, 2007)
228 (European Commission-DG Regio, 2008b)
229 (European Commission-DG Regio, 2011b)
230 (Wernerus, D.; Rusanescu, R., 2014, pp. 194-195)

3.3.2.2 2014-2020 programming period

The former non-binding guidance rules have, largely been incorporated in the binding legal texts for the 2014-2020 programming period, resulting in greater legal certainty. Title VII CPR is entirely dedicated to FIs. There is one single set of rules for governing FIs in all five structural and investment funds and a separate title allows for a clearer presentation of the instruments' specificities. The regulations are directly legally binding to all Member States.

The CPR was published in December 2013. Since the implementing and delegated regulations were published between May 2014 and September 2014 and they deal with essential aspects relating to FIs (e.g. management costs, reporting on FIs, the management and control system), it can be deduced that the legally binding framework for the utilisation of FIs was only partly set at the beginning of the programming period. Moreover, certain aspects are still not yet clear (e.g. the content of the summary of the *ex-ante* assessment according to Article 37 (3) CPR). However, the above time spans constitute a major improvement in the timely delivery of rules compared to the 2007-2013 situation reflecting the Commission's efforts to learn from previous shortcomings.

3.3.3 Management checks by managing authorities

3.3.3.1 2007-2013 programming period

Basically, in the legal framework for the 2007-2013 programming period, there were no particular rules for management verifications concerning FIs. Accordingly, the general rules for management verifications applied. Thus, the MA had to follow the rules set out in Articles 60 and 90 GR and Articles 13, 15 and 19 CIR (2006).

Taking the specificities and complexity of FIs into consideration, the Commission set out its expectations in terms of management verifications in this specific field in two guidance notes (COCOF 10-0014-05[231] and COCOF 08/0020/04[232]).

Both, during the appraisal and selection process and during the running of the FIs, the MA should ensure, in particular, that the operation complies with the relevant EU and national rules (structural funds, state aid, public procurement, environment, etc.), the operational programme and the agreed investment policy.[233]

3.3.3.2 2014-2020 programming period

Generally, the task entrusted to MAs became both bigger and more complex. The regulatory framework for the 2014-2020 programming period imposed additional and much more detailed responsibilities on the managing authorities.[234] This is also true for the management verifications on FIs.

Whereas in the previous programming period, the Commission's guidance notes set out the particular conditions for management checks applicable to FIs, the current programming period dedicated an entire Article of the delegated regulation to the specificities of FI management and control. Although the duties do not reflect a shift towards higher requirements for management checks themselves, Article 9 is, however, much more detailed with regard to the

231 (European Commission-DG Regio, 2012)

232 (European Commission-DG Regio, 2008a)

233 (European Commission-DG Regio, 2012, p. 28)

234 Examples of increased duties of the managing authorities are the requirement for the implementation of anti-fraud measures (Article 125(4)(c) CPR) or the responsibility for drawing up the management declaration and the annual summary (Article 125(4)(e) CPR)

supporting documents allowing verification of compliance with EU and national law and with the conditions for funding.

3.3.4 Audits by audit authorities

3.3.4.1 Control environment

3.3.4.1.1 2007-2013 programming period

Similarly to the tasks of the MAs, the legal framework does not contain any particular rules regarding audits of FIs by audit authorities. As a result, the general rules for audits by AA apply as set out in Article 62 GR and Article 16 CIR (2016).

Since there was no further official guidance for the AAs, the actual requirements for the audit work in that particular field was unclear. The "Common audit framework", published by the Commission in 2011, served to fill this gap.[235] Originally intended as an audit manual for audits of FIs by the Commission's own staff, the national AAs use this manual as a reference point for their own audits.[236] The manual itself describes in detail audit procedures to be performed at different stages of planning for the setting up and implementation of FIs. Remarkably, this manual does not solely cover legality and regulatory audit objectives, but also sound financial management objectives, which are usually not covered by audits, even though it is defined in the Financial Regulation.

The expected audit work differs from the classic audit portfolio of the national AAs. With regard to FIs, the classical audit approach as used for audits of operations can cause an assurance gap. According to Article 78(6) GR, the only condition for certifying amounts in the 2007-2013 programming period related to FIs as eligible expenditure under the operational programme is that the amounts concerned had to have been used to establish or contribute towards funds or holding funds. In other words, there is no requirement to establish a link between the contribution from the operational programme and the amount actually disbursed to the final recipient. This structure bears a certain level of risk. If the contribution to the FI is sampled, there is no assurance that all material aspects will be covered by an audit. Especially, when the FI is hit at the very first stage (e.g. right after being set up), the actual implementation cannot be checked as no active management and investment process has yet taken place. Moreover, as audit authorities were not required to audit this expenditure during the period, there is a risk that this expenditure will not be checked adequately for eligibility.[237]

In order to avoid any material assurance gaps and overlooking substantial errors, system audits can provide further assurance and bridge a potential assurance gap and cover the audit objectives as stated in the Commission's manual. Here, the timing of the system audits is important. To uncover potential problems early in the process, a preliminary system check could be carried out early in the period. This preliminary check must be accompanied by detailed checks of real investments (e.g. on a yearly recurrent basis or together at closure). Whenever a vital part of the system has been changed, the system audit must be re-performed.

3.3.4.1.2 2014-2020 programming period

According to Article 9(2) CDR (2014) the AA must ensure that FIs are audited throughout the programming period until closure, both in the framework of systems audits and audits of operations in accordance with Article 127(1)

235 (European Commission-DG Regio, 2011a)

236 (European Commission-DG Regio, 2011a, p. 4), (European Commission, 2015i, p. 4); (Wernerus, D.; Rusanescu, R., 2014, p. 195)

237 (European Court of Auditors, 2017d, p. 51)

CPR. Principally, there are still impediments regarding the audit coverage for audits of operations. However, due to the limited possibilities for frontloading[238], these impediments do not imply such a negative potential on the audit assurance level.

The above mentioned "Common audit framework", issued by the Commission and used by its own departments and the national audit authorities when auditing FIs for the 2007-2013 programming period, has not been updated to the amended legal framework for the 2014-2020 programming period. In consequence, despite a more extensive legal framework on FIs paired with more responsibilities for the AAs[239], there is no guidance to consolidate the various rules. This situation might undermine the increased legal certainty for the audit environment and could have an impact on the effectiveness of the audit work.

3.3.4.2 Timing of compliance audits

3.3.4.2.1 2007-2013 programming period

Since there is no need to justify the declared amounts with actual eligible expenditure in the interim statements of expenditure, transfers of funds to FIs can be regarded as advance payments. The clearance of non-eligible expenditure does not occur until the interim or final closure of the programming period. In consequence, the final eligible expenditure might not be determined before the closure of the OP, which means that an effective audit can only be conducted by the AA after that date, when the underlying audit population can be determined.[240] However, besides the low behavioural effect of such a late audit on auditees, the closure process may leave insufficient time for the AA to carry out their work satisfactorily and check final statements of expenditure. This is perceived as a particularly high risk.[241]

3.3.4.2.2 2014-2020 programming period

With regard to the payment of the EU contribution, the CPR does not distinguish between the implementation and closure phases. The frontloading of FIs with EU contributions is much more limited in 2014-2020 compared to 2007-2013. This structure enables the AAs to audit the eligibility criteria set for the final beneficiaries gradually, which increases the behavioural effect on the managing authorities and financial intermediaries, and ensures a structured planning of the audit field work.

However, the AAs must consider the specificities of FIs, with a need to have it reflected their audit approach and in particular in their sampling methodology for the audits of operations.

3.3.5 Interim conclusion

The increased complexity of the regulatory regime in the 2014-2020 programming period has inevitably boosted the responsibilities of the main control bodies at Member State level, i.e. the managing authority and the audit authority. To organize them differently reflecting on this shift towards a more systematic but more complex audit environment

238 (Bode, M., 2015, pp. 180-181); Contributions to the SME-Initiative are an exception, since, for this, 100% frontloading is possible, even limited to 3 months (Article 39(7) CPR); see also paragraph 3.2.5.2

239 (Bode, 2013); see also Chapter 2

240 Nevertheless, ineligible amounts detected by the national authorities during the course of the programme closure are still ineligible at closure

241 (European Court of Auditors, 2017d, p. 49)

is challenging for these authorities. This is particularly true for the AAs, which face considerable barriers in executing proper audit work.

However, the control work expected of the MAs is highly regulated in the 2014-2020 programming period, which restrains the professional judgement of the MAs. On the other hand, neither the legislation nor the Commission have provided the AAs with technical guidance on the actual audit work itself.

Moreover, since the rules were not fully enacted at the outset of the programme period, the governance system was not fully operational from the beginning and needed some time to become established.

It remains to be seen whether this governance structure can lead to a high degree of assurance on legality and regularity on the one hand, and to an effective and efficient use of FIs as a delivery tool for financial support from the EU budget on the other.

3.4 Shortcomings identified in the implementation of financial instruments

There has been increased academic discussion on FIs in recent years,[242] and commentaries on them have also grown progressively, to address, among other issues, the problems that prevent the efficient and effective use of this type of revolving instrument. Based on a meta-analysis of reports, studies and own assessment of the regulatory framework, this paragraph focuses on some shortcomings that have not yet been examined in detail in recent publications and reflects on certain aspects of the legal framework applicable to the 2014-2020 programming period that may cause trouble during implementation.

3.4.1 FIs not addressing market needs

Without an understanding of the actual needs in terms of the nature and type of support (loans, guarantees or equity stakes), or how the available funding corresponds to what is required, it is very difficult to assess whether the intended policy objective can be achieved by an FI. In the 2007-2013 legal framework, the only explicit requirement for *ex-ante* assessments ("gap assessments") to be established and applied at FI level relates to holding funds.[243] For non-holding funds, until 2011, it was possible to infer an indirect obligation to carry out such an assessment from the need to provide a business plan for each FI.[244]

However, the December 2011 amendments to the Implementing Regulation removed the specific requirements concerning a business plan.[245] While it is still mandatory to submit a business plan, the details thereof (such as the targeted enterprises or urban projects, the criteria, terms and conditions for financing them and the justification for, and intended use of, the contribution from the Structural Funds) are no longer specified.

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242 See for example (Sant, 2014); (Dudka, H.; Lancry, R., 2014); (Bode, M., 2015); (Bode, M., 2016); (Bode, 2017); (Wernerus, D.; Rusanescu, R., 2014); (Wirbatz, L.; Budzynska, N., 2015); (Wishlade, F.; Michie, R., 2014); (Wishlade, 2018); (Nicolaides, 2018a); (Nicolaides, 2018b); (Gloazzo, 2018)

243 For holding funds, the requirement for a gap analysis is inferred from Article 44(1)(a) CIR (2006): "[…] The funding agreement [between Member State or managing authority and holding fund] shall, where appropriate, take account of the following: (a) as regards financial engineering instruments supporting enterprises, primarily SMEs, including micro-enterprises, the conclusions of an evaluation of gaps between supply of such instruments, and demand for such instruments; [...]"

244 Article 43(2) CIR (2006),version of 15 February 2007

245 CIR (2006) with the 2011 amendments

Failure to carry out a satisfactory gap assessment exposes the design of the FI to the risks that the instrument may not address actual market needs, resulting in overcapitalisation of the FI and/or little or no real impact on the ground;[246] and that the instrument may not be sufficiently aligned with the objectives of the OP.[247]

3.4.1.1 Addressed in 2014-2020 programming period?

For the 2014-2020 programming period, a detailed *ex-ante* assessment is obligatory. The points to be analysed and reported on are set out in the CPR (Article 37(2) and (3) CPR).

The *ex-ante* assessment is necessary to establish evidence of market failures (or suboptimal investment situations) and estimate the level and scope of public investment needs; it includes an assessment of the types of FIs most suited to the situation on the ground.

The *ex-ante* assessment must be submitted to the programme monitoring committee for information, and its summary findings and conclusions must be published within three months of their finalisation (Article 37(3) CPR). This creates additional transparency and can prevent the obvious misallocation of funds.

The value and outcome of the *ex-ante* assessment is dependent on underlying assumptions which must be as rational and as realistic as possible. Where this is not the case, the advantages of the phased payment system will be diluted since the maximum possible FI frontloading depends to a high degree on the level of the programme commitment.

3.4.2 Low "real" leverage of private funds in Cohesion FIs

The attraction of private-sector funding to complement the available public funds is considered to be one of the main advantages of using FIs. It allows more projects to benefit from the same level of public investment. Since this arrangement requires funds to be paid back to the FI, the likelihood that the final recipients will become dependent on public support is lower than in the case of grant applicants. It has an educational effect that can potentially add more value to projects than if grants were the sole funding source.[248]

The multiplier effect can be measured by the leverage ratio, expressed as the total funding received by final recipients in proportion to the public contribution.[249]

At the start of the 2007-2013 programming period, the rules did not define how the leverage effect was to be measured. Nor did the regulatory framework explicitly set leverage target rates or require such targets to be specified in the funding agreements between managing authorities and (holding) fund managers/financial intermediaries. The concept of a 'multiplier effect' to measure leverage for FIs in shared management was introduces in 2011 and is calculated by dividing the total funding to final recipients by the EU contribution.[250]

In practice, the private-sector leverage rate for FIs in shared management was very low during the 2007-2013 period, with the exception of guarantee funds.[251] For loan funds in particular, the "real" leverage rate calculated by the ECA for its sample of FIs was close to one, meaning that barely any additional funding was raised. Compared to the

246 (European Court of Auditors, 2015a, p. 17)
247 (European Court of Auditors, 2012a, p. 20)
248 (European Court of Auditors, 2016b, p. 40); This view is not shared by all scholars, e.g. (Nicolaides, 2018b)
249 (Wernerus, D.; Rusanescu, R., 2014, p. 194)
250 (European Court of Auditors, 2012a, pp. 23, 37)
251 Ibid, pp. 37-40

benchmark multiplier achieved by the SME Finance Facility (SMEFF), which was usually more than five[252], the low rate for FIs cannot be considered satisfactory.

Unless a target leverage rate is set in the funding agreement and management fees are at least partially linked to attracting private investors, there is little incentive for the fund manager to get private investors aboard. However, no such performance-based remuneration system has been put in place for FIs in shared management.

3.4.2.1 Addressed in 2014-2020 programming period?

For the 2014-2020programmingperiod, theCPR does not explicitly refer to the definition of the leverage effect in the EU's Financial Regulation. However, the concept defined in Article 37(2)(c) CPR is essentially identical: "[…] an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect)".[253]

Moreover, it is clear from the requirements for reporting on realised leverage[254] that the ESI Funds contribution forms one part, while the remaining resources form another. Thus, the Commission continues to consider national co-financing as leveraged by the EU's funding of the OP.

3.4.3 Delays in the implementation of FIs

During the 2007-2013 period there were significant delays in the setting-up and further implementation of Cohesion FIs in all Member States. These delays were generally due to administrative, legal, organisational or strategic issues.[255] The implementation of FIs and the transfer of funds to intervention areas were affected by additional delays (e.g. up to 18 months to set up and launch an FI).[256] The low disbursement rates in many Member States, as described in paragraph 3.2.3.1.1 above, are an obvious result of the difficulties in setting up and implementing FIs.

Delays at any stage inevitably postpone beneficiaries' access to FI financing and therefore influence the effectiveness and impact of Cohesion Policy as a whole. This was particularly so given the limited eligibility period for the Cohesion FIs set up for the 2007-2013 programming period.

252 Ibid

253 Moreover, in its guidance note the Commission explicitly confirms that the leverage effect in the ESIF context is to be calculated as set out in the Financial Regulation. See (European Commission, 2015h, p. 4)

254 No VIII of Annex I to Commission Implementing Regulation (EU) No 821/2014 of 28 July 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards detailed arrangements for the transfer and management of programme contributions, the reporting on financial instruments, technical characteristics of information, communication and visibility measures for operations and the system to record and store data (CIR (2014b)), (European Commission, 2014g)

255 (MAZARS; ECORYS; EPRC, 2013, p. 62); (Metis GmbH; EPRC, 2013, pp. 57-59); (European Court of Auditors, 2012a, pp. 32-33)

256 (Metis GmbH; EPRC, 2013, p. 57)

3.4.3.1 Addressed in 2014-2020 programming period?

The lessons learnt from the practical application of FIs, by both public and private stakeholders, could pave the way towards greater openness to FIs and overcome the "cultural gap" of predominantly using grants, in a climate where innovation is desirable to cope with the budgetary crisis and private risk-aversion.[257]

Since all Member States except three gained experience of the implementation of FIs during 2007-2013, it can be safely presumed that these lessons have been learnt.[258] Nonetheless, given the greater scope for using FIs, coupled with the substantial changes to the EU regulations, there is also an increasing need for capacity-building.[259]

A key factor for avoiding the mistakes of the past is standardisation: The option for managing authorities to design FIs in accordance with standard terms and conditions laid down by the Commission should significantly streamline and facilitate the FI set-up process, since by using an off-the-shelf FI with standard conditions it can be assumed that state aid rules are being met.[260]

Since FIs can be implemented at transnational, cross-border and Union-level, the positive side-effects may include greater exchange and pooling of knowledge, which could help to speed up implementation. On the other hand, however, the more regions and bodies are involved, the more complex the legal structure, which in turn could mean new risks of delay that need to be considered by Member States when designing funding structure.

3.4.4 Excessive endowment of Cohesion FIs

As already described above, for the 2007-2013 period, there is no requirement to link the initial endowment of an FI (or any subsequent increases in the available funds) with the actual financial support provided by the FI to the final beneficiaries during implementation of the OP.[261] This arrangement carries the risk that at least part of the EU contribution will be "parked" in the accounts of the banks and financial intermediaries managing the FI, and not actually used. This represents an opportunity cost, in that the funds could potentially have been used for other investments. Further, it means that non-eligible expenditure will not be cleared until a late stage of the programming period.[262]

Funds not paid or guaranteed to final recipients are not considered eligible, and unused FI endowments have to be returned to the EU budget at closure. Excessive endowments also raise concern about management fees and charges, which could theoretically be determined on the basis of the capital paid into the FI rather than the payments/guarantees actually provided. A number of FIs in shared management are implemented by state-owned banks in Member States. In such cases, oversizing the endowment provides a means of generating income for those banks without actually providing the expected services.

257 (Metis GmbH; EPRC, 2013, p. 62)

258 (European Commission-DG Regio-DG Empl, 2015, p. 48)

259 (MAZARS; ECORYS; EPRC, 2013, p. 97)

260 Article 38(3)(a) CPR. Commission Implementing Regulation (EU) No 964/2014 gives details for the design, structure and terms and conditions of just three types of FI: the portfolio risk-sharing loan (RS loan), the capped portfolio guarantee and the renovation loan. Commission Implementing Regulation (EU) No 964/2014 of 11 September 2014 laying down rules for the application of Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards standard terms and conditions for financial instruments (CIR 2014c), (European Commission, 2014h)

261 Article 78(6) GR

262 (European Court of Auditors, 2012a, p. 24)

3.4.4.1 Addressed in 2014-2020 programming period?

The possibilities for FI frontloading are much more limited in the 2014-2020 programming period.[263]

Due to the stricter limits on the frontloading of FIs with the EU contribution, low disbursement rates should be far less common during the 2014-2020 programming period.

3.4.5 Clarification of the approach to the preferential treatment of private investors in Cohesion FIs

For FIs in shared management set up during the 2007-2013 programming period, returns on investments may be allocated preferentially to investors operating under the market economy investor principle.[264] Preferential treatment may be exercised, for example, through contracts that do not grant the public funding partner the same repayment rights as private co-funders; or through an unequal share in profit and loss between private and public partners.

Preferential treatment can be justified if it is needed to attract private investment in failing markets, where additional private funding can contribute to the achievement of public policy objectives. However, neither the regulations nor the Commission's guidance notes for the 2007-2013 period provide any indication as to how the appropriateness of preferential treatment is to be checked. So far, these arrangements are only examined by the Commission from the angle of potentially unlawful state aid[265], which does not cover situations where private partners are entitled to a disproportionately high share of profit in relation to their contribution to potential losses.

If unjustified, preferential treatment may result in a drain on the initial FI endowment and thus reduce the legacy funding available for the next investment cycle after the FI is wound up.

3.4.5.1 Addressed in 2014-2020 programming period?

The CPR rules allow preferential treatment for the 2014-2020 programming period. The Delegated Regulation stipulates that the level of preferential treatment should be proportionate to the risks taken by investors and limited to the minimum necessary to attract them.[266]

The obligation for Member States to assess the need for preferential treatment in the *ex-ante* assessment, and to provide some justification for the latter, can clearly be regarded as progress towards the more efficient management of FIs; it also fosters transparency in general.

3.4.6 Regional focus of Cohesion FIs results in a subcritical mass

The territorial approach is one of the major characteristics of Cohesion Policy. In order to be eligible, projects must be located in a region eligible for the OP from which the FI has received its endowment. In several regional OPs, this restriction has made it more challenging for fund managers to identify valuable projects and reach target groups.[267]

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263 For FIs directly implemented by the MA there is no frontloading at all; 100% frontloading exists for SME Initiative contributions, but it is limited to 3 months

264 Article 43(5) CIR (2006)

265 (European Court of Auditors, 2012a, pp. 25-26)

266 Article 6(1)(d) of CDR (2014)

267 (MAZARS; ECORYS; EPRC, 2013, p. 59)

An overly narrow geographical scope may also lead to structural inefficiencies in the implementation of funds. This is because the overhead costs and the risks associated with investments, guarantees or loans cannot be spread over a sufficiently large number of final beneficiaries. In other words, the FI lacks the critical mass to be implemented efficiently.[268]

During the 2007-2013 programming period, there were no incentives in the legal framework to design sufficiently large FIs, and only limited flexibility to set up funds jointly for several OPs.

3.4.6.1 Addressed in 2014-2020 programming period?

During the 2014-2020 programming period, Member States enjoy greater flexibility in setting up Cohesion FIs.[269] Moreover, widening the options for implementing FIs (they may be set up at regional, national, transnational/ cross-border or Union level) has introduced the legal prerequisites for establishing funds with significantly larger endowments.

Finally, there are considerable financial incentives for Member States to set up FIs that are better endowed or extend beyond the regional level. If the entire priority axis of an OP is delivered through an FI, an incentive of a 10 % top-up of the maximum co-financing rate can be applied.[270] If a separate priority axis is set up to be delivered through an FI at Union level and managed directly or indirectly by the Commission, the axis qualifies for a 100% co-financing rate.[271]

3.4.7 Insufficient reporting requirements for the monitoring of Cohesion FIs to be effective

Inadequate monitoring and reporting requirements in relation to Cohesion FIs were identified as a major problem during the early stages of the 2007-2013 period. Until 2012, quite simply, no monitoring and information system for FIs was in place at Commission level: Neither Regulation (EC) No 1083/2006 nor Regulation (EC) No 1828/2006 had imposed any special reporting requirements for FIs.

It was only when Article 67 of Regulation (EC) No 1083/2006 was amended in December 2011 that reporting requirements for FIs co-financed by the ERDF or the ESF were established unambiguously. Since then, managing authorities have been required to provide the Commission, by 30 June of each year, with a description of the FI and implementation arrangements, details identifying the implementing entities, the amounts of assistance paid to the FI, and the amounts paid by the FI to the final recipients.

However, these requirements must be regarded as no more than a starting point, since the data provided are very basic in nature and often unreliable.[272] In particular, they do not allow an assessment of FI performance.[273]

268 (Metis GmbH; EPRC, 2013, pp. 78-79); (European Court of Auditors, 2012a, pp. 29-30)
269 Article 96(1) CPR; See also paragraph 3.2.3.1.2 on this issue
270 Article 120(5) CPR
271 Article 120(7) CPR
272 (European Commission-DG Regio-DG Empl, 2015, p. 10); (Wishlade, F.; Michie, R., 2014, p. 6)
273 (European Court of Auditors, 2015c, pp. 20-21)

3.4.7.1 Addressed in 2014-2020 programming period?

Much more extensive reporting requirements were introduced at the beginning of the 2014-2020 period. Managing authorities now have to report specifically on operations comprising FIs in an annex to the annual implementation report.[274]

Annex I CIR (2014b) establishes 41 points (71 questions) to be used as the basis for this reporting. From 30 November 2016 onwards the Commission will compile summaries of the submitted information to inform the European Parliament and the Council about the overall state of progress.[275]

3.4.8 Lack of performance orientation when determining the management costs and fees of fund managers

Although it is recommended by the COCOF guidance note,[276] the Member States are not legally obliged to link remuneration to the quality of investments actually made, as measured by their contribution to the achievement of the strategic OP objectives, and to the value of the resources returned to the operation from investments undertaken by the funds.

Where the remuneration of fund managers is not necessarily linked to performance criteria, there is little incentive for financial intermediaries to actually transfer the funds to final beneficiaries. This could adversely affect FI performance. The lack of incentive to manage funds actively could also discourage private investors from participating, with a negative impact on leverage.

3.4.8.1 Addressed in 2014-2020 programming period?

The current legal framework introduces a system of performance-based remuneration in which management costs are partly determined on the basis of criteria such as the disbursement of funds, resources paid back from investments and the contribution of the FI to the objectives and outputs of the programme.[277]

The fact the EGESIF guidance note on management costs and fees was published on 26 November 2015 (i.e. nearly two years after the outset of the programming period) is not at all promising of an effective uptake. This is especially true if it is borne in mind that the majority of funding agreements with fund managers and financial intermediaries need to be concluded at the beginning of the programming period in order to guarantee smooth implementation and disbursement to the final recipients.

3.4.9 High degree of discretion in the reutilisation of funds

As a general rule, for the Cohesion FIs set up during the 2007-2013 programming period, the legal framework stipulates that any resources returned are to be re-used for the benefit of the target group.[278] The Commission's

274 Article 46(1) CPR
275 Article 46(4) CPR
276 (European Commission-DG Regio, 2012, p. 14)
277 Article 12(1) CDR (2014). Article 13(1)(b) and (2)(b) CDR (2014) places ceilings on performance-based remuneration
278 Article 78(7) GR

guidance note[279] states that these resources may be re-used either before or after the end of the eligibility period (31 December 2015), subject to no deadline, so they are theoretically of indefinite duration.[280]

Moreover, provided it is for the benefit of the target group, the use of returned resources is entirely at the discretion of the Member States. Among other things, the resources could be spent through grants. Doing this would cause the fund capital to melt away over time, thus limiting the advantages provided by the revolving system.

Although the Commission guidelines on closure suggest that resources can be reinvested indefinitely,[281] the regulations cannot be understood in this way.[282] Besides, legally speaking, any activity going beyond the closure of the programmes and not concerning the EU budget is the responsibility of the Member State concerned.

3.4.9.1 Addressed in 2014-2020 programming period?

Article 44(1) CPR stipulates, concerning the reutilisation of funds before the end of the eligibility period, that resources paid back to a FI from investments or from the release of resources committed for guarantee contracts, including capital repayments and gains and other earnings or yields, must be re-used for the purposes further described in Article 44(1)(a), (b) and (c), up to the amounts necessary and in the order agreed in the relevant funding agreements.

From Article 44(1)(a), (b) and (c) CPR it is clear that this recycling is limited to repayable instruments, as grants are not included in the list. There also remains a loophole in the notion “up to the amounts necessary”, which still leaves the MA a good deal of discretion to define what is "necessary".

In Article 45 CPR, which provides for resources paid back to FIs to be re-used for at least eight years after the end of the eligibility period, the CPR recognises that FIs are intended to retain their revolving nature after that period. In other words, the regulation sets a minimum period for earmarking the funds allocated to a FI, and that period extends beyond programme closure.

3.4.10 Interim conclusion

The legal framework for the 2014-2020 programming period clearly shows that the Commission has attempted to address most of the weaknesses that emerged in the past. In particular, the wider scope for using FIs, the compulsory nature of *ex-ante* assessment and stricter monitoring requirements are steps towards greater efficiency and effectiveness in the operation of this financial product under the ESI regime.

However, further clarifications and advice from the Commission are necessary to bridge the uncertainties that still persist in the regulatory provisions.

Concluding remarks

The European Union’s Cohesion Policy is a very dynamic policy field. As this study has shown, it follows the European integration process and is still developing. Regardless of its intended policy objectives, there are doubts as to whether intervention is effective at all or is purely a transfer mechanism between Member States. As the future

279 (European Commission-DG Regio, 2012, p. 24)
280 (European Commission, 2015d, p. 7 Annex)
281 Ibid
282 Article 108 GR in connection with Articles 152(1) and 153 CPR

legal framework is currently being negotiated, it remains to be seen if legislators will take critical points into consideration and learn from previous experience.

The importance of Cohesion Policy for the European integration process is very well reflected by the fact that meanwhile more than one third of the total EU spending is dedicated to this policy field. It is a catalyst for investments that have become increasingly important for co-financing public investments, while compensating for shrinking national and regional investments in the aftermath of the economic and financial crisis. The effectiveness of Cohesion Policy funds on the living conditions (here expressed as growth rate of GDP) differs widely between the Member States. There is also no evidence for the Cohesion Policy field that a high level of decentralisation positively correlates with a positive economic development.

Cohesion Policy in the EU embraces a wide range of stakeholders at various levels, and so complicates decision-making and oversight. This multilevel governance structure entails considerable risk as regards achieving political objectives and ensuring that spending is correct. Given this background, a robust management and control architecture is vital to ensure that public money is used effectively and legally.

Chapter 1 evidenced in this connection that the work of the national audit authorities as the last national line of defence therefore provides an essential foundation for appraising legality and regularity, and the proper use of Cohesion Policy resources. Its prominent role within the internal control framework is a result of the single-audit-concept the European Commission is applying actively since the 2007-2013 programming period. The single-audit-concept, as enshrined in the internationally accepted audit standards and applied by the national AAs, can serve as powerful tool to effectively conduct the audit work. If properly applied it can save resources of the AAs enabling to concentrate on the riskier areas and, in consequence, to achieve a higher assurance level. However, the application of the single-audit-concept requires decent preparatory work and a holistic incorporation in the AAs' methodology and audit strategy. Whether the radical shift towards stronger reliance on national management systems envisaged for the post 2020 programming period is the right way is questionable. Under the term "enhanced proportionate arrangements", the Member States may deviate from the standard management and control procedures. This also affects the AAs' work as the Commission's proposal for the post 2020 sectoral regulation extends the concept of relying on the work of others also to the managing authorities. This might cause material problems and lead to potential audit and assurance gaps.

Based on the study illustrated in chapter 2, the following results can be drawn. The work of the national audit authorities constitutes an essential foundation for appraising legality and regularity, and the proper use of Cohesion Policy resources. They are in charge of independent *ex-post* controls and act as an extended arm of the Commission in the Member States. In this way, the AAs help to protect the financial interests of the EU.

In the context of that responsibility, the AAs are entrusted with a multitude of tasks, which, due to their specificity and diversity, call for significant requirements in terms of organisation and expertise. This paper shows that the range of tasks is very extensive, and the subsidiary legal framework can differ from one Member State to another and even from one region to another within one Member State. Moreover, the combination of ongoing, yearly, and one-off audit and reporting tasks is challenging for their internal organisation, in particular for the allocation of human resources.

The multiple roles and the changing legal environment necessitate a high level of professionalization within the AAs. This includes specialised training courses and developing theoretical knowledge in different fields. A high degree of turnover within the AAs and frequent changes of AA should therefore be avoided.

The AAs' responsibilities have increased between the 2007-2013 and 2014-2020 programming periods. Additionally, the regulatory framework and further guidance have become more complex and comprehensive, despite the aim of simplifying the implementation of the Cohesion Policy. For the 2014-2020 period, the number of regulations and the amount of guidance increased significantly in comparison with the two previous programming periods. Between the 2007- 2013 and 2014-2020 periods, the number of pages of regulations and guidance doubled from 1 732 to 3 889. Compared with the 2000-2006 programming period, there are now 50 % more regulations and 570 % more guidance

notes.[283] From a beneficiary's point of view, however, it must be highlighted that it is not the European regulatory framework, but rather the Member States' organisational structures and administrative inefficiencies, which constitute a significant proportion of the administrative burden.[284]

In this connection, chapter 3 contributed to the discussion, as it clearly shows that financial instruments are a very challenging field not only for the managing bodies and financial intermediaries, but also for the AAs, which have to audit this area and provide assurance on the correct treatment of it. But how to provide assurance in a field, with high legal uncertainty, with interpretation space and high discretion? Without adequate controls, a high level of discretion even increases the risk of corrupt spending as studies show.[285] The shortcomings for this delivery mechanism identified in the past are only partly addressed in the current programming period. Other areas of concern have come into force, making an effective audit work of the AA challenging. The full potential of financial instruments can just be raised if the delivery mechanism is more simplified but without negative impact on the assurance level, and if the involved actors have a common and professional expertise on how to structure and manage repayable instruments. Here, chapter 3 clearly demonstrated that the devil is in the details. Despite the high level promises to streamline and simplify the utilisation of financial instruments, good developments are (partly) undermined by problematic detailed arrangements.

In general, the current and the previous programming periods saw accountability arrangements strengthened for Cohesion Policy. The reinforced internal control arrangements have contributed to a significant drop in the level of irregularities identified by the EU's external auditor, the European Court of Auditors, a drop that translates into billions of euros spent without irregularities.[286] As shown in paragraph 2.3.1, the error rates have significantly plunged and the long term trend clearly shows towards reaching the 2 % materiality level.

In conclusion and based on the studies, the hypothesis[287] is confirmed.

To what degree this reduction in the ineligible spending and the preventive and corrective measures of the Commission to protect the EU budget is attributable to the work of the AAs and their ongoing professionalization is subject to further research. The results of this dissertation clearly indicates that there is a correlation between the AAs' work and the robustness of the management and control system of the EU Cohesion Policy.

According to the proposed regulatory framework for the 2021-2027 programming period, the governance system will change materially. The possibility of relying entirely on national rules when carrying out management verifications, the absence of an independent check on the MCS target state at the beginning of the programming period, and the lack of detailed rules and implementation guidance represent major changes to the current MCS. These measures can potentially put the current level of accountability and assurance at risk and jeopardize the improvements in the accountability arrangements.[288] This is especially true against the backdrop that it takes material efforts and time to build the administrative capacities to cope with changes. Periodical introduction of considerable changes, not solely in the regulatory details but also in fundamental concepts, deteriorates the achievements of institutional learning.

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283 (European Court of Auditors, 2018b, p. 28)

284 (European Court of Auditors, 2018e, p. 21); (European Court of Auditors, 2018b, pp. 34-37)

285 (Mungiu-Pippidi, 2013, pp. 10-11); (European Court of Auditors, 2019b, pp. 24-25); (European Court of Auditors, 2019c)

286 (European Court of Auditors, 2018b, pp. 24-25)

287 The national audit authorities play an important role in the framework of Cohesion Policy. Their responsibilities are manifold and have developed over the programme periods. The responsibilities of the national audit authorities have been increased and become more complex over the programme periods and led to an increased assurance level for the eligibility of Cohesion Policy funds

288 (European Court of Auditors, 2018b, p. 25)

It is doubtful whether this approach will assure a consistent audit standard among the Member States and a reliable level of assurance on the regularity of the amounts paid from the EU budget.

Simplification is valuable as it facilitates and streamlines the implementation of EU policies. However, simplification is not a goal in itself and should not come at the cost of increased uncertainty on the proper spending of EU taxpayers' money.[289]

In conclusion, and based on the studies, sub-hypothesis 1[290] is confirmed.

The establishment of national audit authorities contributed over the years towards a higher assurance on the regularity of the EU spending (expressed in reduced error rates). Furthermore, as this analysis has shown, the level of quality of the AAs' work and output has risen steadily. Simultaneously, the AAs have been facing a persistent rise in demands on their responsibilities and on the extent of their tasks. In consequence, taking both developments together, this can be interpreted as an increased level of professionalism within the AAs.

289 (European Court of Auditors, 2018e, p. 21); (European Court of Auditors, 2018b, p. 13)

290 There is a tendency to weaken the management and control system by simplification measures, which leads to audit and assurance gaps

List of scientific and practical contributions

The scientific area of the management and control systems in Cohesion Policy with special focus on audit authorities is not very well developed. There are not many research papers on it. This study is the first that investigates the evolution of the functions and responsibilities of AAs from their origination and provides a holistic and comprehensible overview of this field.

Furthermore, the dissertation does not solely compares past and present developments but also dares to look into the future and critically assesses the proposed future legal setup applicable to the AA. For the first time, this research project tries to link the development of the task entrusted to the AAs to the development of the legality and regularity of the budget execution of the EU in the Cohesion Policy. Accordingly, the results of this dissertation can provide valuable scientific input for different stakeholders. The management and control systems of the programmes of Convergence and the Regional competitiveness and employment objectives vary significantly from Member State to Member State, taking account of national administrative structures, practices and procedures. The Member States might use the outcome to decide how it will structure the audit work and on which entity it will appoint the audit function.[291] Additionally a deep knowledge on the topic provides the basis for the sound planning of needed financial and human resources. The audit authorities might use the study results to properly plan and allocate the audit work and to formulate a sound audit strategy. The dissertation might also useful for the legislator and feed in the legislative discussion for future legislative proposals and amendments to the current ones.

As the results of this dissertation clearly indicates a correlation between the AAs work and the strength of the governance structure, the research can feed into the institutional discussion for the design of the management and control system applicable for the post 2020 programming periods.

291 In relation to the audit work, the systems may range from a wholly centralised system, where one audit authority performs the totality of the audit work, to highly decentralised structures, where a cascade of audit bodies are involved in executing the audit work under the overall responsibility of the audit authority

List of publications

1. *The Audit Authority's Role within the Single Audit Concept as Governance Principle in the EU's Cohesion Policy,*
   journal: European Structural and Investment Funds Journal (ESTiF Journal), issue 3/2019

2. *Functions and Responsibilities of National Audit Authorities in the Framework of the Cohesion Policy — a synoptic Comparison between the 2007-2013, the 2014-2020, and the 2021-2027 Programme Period*,
   journal: European Structural and Investment Funds Journal (ESTiF Journal), issue 1/2019

3. *Governance Structure in the Area of Financial Instruments in the 2007-2013 and 2014-2020 Programming Periods A Shift Towards a More Systematic But Also More Demanding Approach for National Control Authorities*
   journal: European Structural and Investment Funds Journal (ESTiF Journal), issue 4/2017

4. Making Better Use of the EU Budget through Financial Instruments – a Reality Check
   journal: European Structural and Investment Funds Journal (ESTiF Journal), issue 4/2016

5. *Financial Instruments in Cohesion Policy – Do the Legal Provisions for the 2014-2020 Programming Period Adequately Address Previous Shortcommings in the Way these Repayable Instruments were Implemented?*
   journal: European Structural and Investment Funds Journal (ESTiF Journal), issue 3/2015

6. *Abgrenzung des Prüfungsgegenstandes bei EU Systemprüfungen - Organisatorische versus inhaltliche Abgrenzung (Demarcation of audit scope of EU system audits – organizational versus content driven determination)*
   journal: Zeitschrift Interne Revision (ZIR), issue 1/2014

7. *Aufgabengebiete der Prüfbehörden im Rahmen der Strukturfondsförderung (Areas of responsibilities of audit authorities in structural funds policy)*
   journal: Verwaltung und Management (VUM), issue 3/2013

8. *Prüfungsumfang und Bewertungssystematik von EU-Systemprüfungen (Audit scope and evaluation system of EU system audits)*
   journal: Zeitschrift Interne Revision (ZIR), issue 6/2012

9. *Die Grundzüge von Systemprüfungen nach Art. 62 Abs. 1 lit. a VO (EG) 1083/2006 (Basic concepts of system audits according to Art. 62 (1) lit. a Regulation (EC) 1083/2006)*
   journal: Zeitschrift Interne Revision (ZIR), issue 4/2012

10. *Financial Reporting und Enforcement als Mittel der Corporate Governance (Financial Reporting and Enforcement as means of Corporate Governance)*
    journal: Zeitschrift für Corporate Governance (ZCG), issue 4/2010

11. *Praxis der Fehlerkommunikation in der Rechnungslegung und Corporate Governance: Eine empirische Untersuchung von Fehlern in der Rechnungslegung kapitalmarktorientierter Unternehmen (Practise of error communication in financial reporting and corporate governance – an empirical analysis of errors in financial reporting of capital market oriented companies)*
    book: VDM Verlag 08/2009

12. *Anlässe einer Kaufpreisallokation bei Unternehmenstransaktionen unter steuerlichen Gesichtspunkten (Occations of a purchase price allocation under tax perspective)*
    journal: Steuern und Bilanzen (StuB), issue 7/2009

13. *Änderungen bei der Bewertung von zu Handelszwecken erworbenen Finanzinstrumenten Vom Referenten- zum Regierungsentwurf des BilMoG: Zwei Schritte vor, ein Schritt zurück (Changes in the valuation in*

held for trading financial instruments according to the draft BILMOG-law – one step ahead and 2 steps back)
journal: Steuern und Bilanzen (StuB), issue 12/2008

14. *Änderung bei der Bewertung von zu Handelszwecken erworbenen Finanzinstrumenten nach dem BilMOG-Entwurf (Changes in the valuation in held for trading financial instruments according to the draft BILMOG-law)*
journal: Steuern und Bilanzen (StuB), issue 5/2008