

**Common Provisions Regulation 2021-2027: Analysis of the final agreement**

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# **What is the Common Provisions Regulation**

The Common Provisions Regulation (CPR) is a piece of over-arching legislation that applies to various EU funding programmes, including the European Social Fund + and the European Regional Development Fund. It outlines rules that must be followed for the use of funds. It also outlines the criteria by which projects must adhere to be eligible for EU funding. The CPR sets out common provisions for seven shared management: the Cohesion Fund, the European Maritime funds and Fisheries Fund, the European Regional Development Fund, the European Social Fund Plus, the Asylum and Migration Fund, the Border Management and Visa Instrument and the Internal Security Fund.

In 2018 the European Commission released its proposal for a new CPR covering the period 2021-2027. In December 2020 an agreement was reached between the European Parliament and the Council on the final wording of the Regulation.

The European Disability Forum advocated extensively for the Regulation to include a number of provisions that would result in EU funds being used more effectively for social inclusion, accessibility and deinstitutionalisation for persons with disabilities.

In this document we will analyse the final agreement on the CPR and what it means for persons with disabilities. When presenting final text from the Regulation, all amendments to the Commission’s original proposal will be presented in bold and italic. In some cases, where text has been removed from the original proposal, words will also have a strike through.

When the final text of the Regulation is made publicly available, we will share the link on the EDF website.

# **Biggest successes**

## Article 67 - Selection of operations by the managing authority

Article 67 outlines the ways in which managing authorities shall go about selecting EU funded operations. Here, the final text states that the criteria and the procedures should be non-discriminatory. After advocacy from EDF, it also states clearly that the criteria and procedures must “ensure accessibility to persons with disabilities” as well as gender equality. This means that for all funding covered by the CPR, managing authorities must consider the impact it will have on accessibility for persons with disabilities and systematically turn away anything that perpetuates barriers.

### **Article 67 final text**

1. For the selection of operations, the managing authority shall establish and apply criteria and procedures which are non-discriminatory, transparent, ensure **accessibility to persons with disabilities,** gender equality and take account of the Charter of Fundamental Rights of the European Union and the principle of sustainable development and of the Union policy on the environment […]

## Article 6 a (new) - Horizontal Principles

One of EDF’s main advocacy positions was to reintroduce an Article on gender equality and non-discrimination, which had existed in the previous CPR but had been removed in the original proposal for the new one covering the period 2021-2027. After a lot of hard work, a new Article on Horizontal principles was eventually introduced. It states clearly that appropriate steps must be taken to prevent discrimination based on disability. Importantly it also states that “In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.”

### **Article 6 a final text**

1. ***Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds***
2. ***Member States and the Commission shall ensure that equality between men and women, gender mainstreaming and the integration of gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring reporting and evaluation of programmes.***
3. ***Member States and the Commission shall take appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, implementation, monitoring, reporting and evaluation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes.***

## Article 6 - Partnership and multi-level governance

Article 6 on partnership and multi-level governance explains how different stakeholders are included in selecting and monitoring how funds are used. It explains that this process should include “relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination”. We also successfully advocated for the article to mention that funds should be allocated towards capacity building for these stakeholders. This will mean that money should be able to be allocated to civil society organisations that want to be part of the partnership and multi-level governance process in their Member State, and to help them be better prepared for playing an active role.

### Article 6 final text

1. ***For the Partnership Agreement and each programme,*** each Member State shall organise ***and implement*** a ***comprehensive*** partnership ***in accordance with its institutional and legal framework and taking into account the specificities of the Funds*** ***~~with the competent regional and local authorities~~***. That partnership shall include at least the following partners:

(c) relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination.

***2. The partnership established under paragraph 1 shall operate*** in accordance with the multi-level governance principle ***and a bottom-up approach***. The Member State shall involve those partners in the preparation of Partnership Agreements and throughout the preparation ***~~and~~***, implementation ***and evaluation*** of programmes including through participation in monitoring com

***In that context, Member States shall, where relevant, allocate an appropriate percentage of the resources coming from the Funds for the administrative capacity building of social partners and civil society organisations. For Interreg programmes, the Partnership shall include partners from all participating Member States.***

4. At least once a year, the Commission shall consult organisations which represent partners at Union level on the implementation of programmes, ***and shall report to the European Parliament and Council on the outcome.***

## Recital 5

Recital 5 at the beginning of the Regulation gives an overview of the horizontal principles of how the funds covered by the CPR should be used. The Commission’s original proposal already stated that Member States should “respect the obligations of the UN Convention on the Rights of Persons with Disabilities and ensure accessibility in line with its article 9 and in accordance with the Union law harmonising accessibility requirements for products and services.” This has been retained in the final wording.

To this the co-legislators agreed to add the importance of respecting the UN Convention on the Rights of the Child. For persons with disabilities, the most significant additions were the mention that “the Funds should be implemented in a way that promotes the transition from institutional to family and community-based care” and that, when financing infrastructure, the funds “should ensure accessibility for persons with disabilities”.

### **Recital 5 final text**

(5) Horizontal principles as set out in Article 3 of the Treaty on the European Union ('TEU') and in Article 10 of the TFEU, including principles of subsidiarity and proportionality as set out in Article 5 of the TEU should be respected in the implementation of the Funds, taking into account the Charter of Fundamental Rights of the European Union. Member States should also respect the obligations of ***the UN Convention on the Rights of the Child and of*** the UN Convention on the Rights of Persons with Disabilities and ensure accessibility in line with its article 9 and in accordance with the Union law harmonising accessibility requirements for products and services. ***In that context, the Funds should be implemented in a way that promotes the transition from institutional to family and community-based care.*** Member States and the Commission should aim at eliminating inequalities and at promoting equality between men and women and integrating the gender perspective, as well as at combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The Funds should not support actions that contribute to any form of segregation ***or exclusion, and, when financing infrastructure, should ensure the accessibility for persons with disabilities.***

# **Other successes**

## Article 4 - Policy objectives

Article 4 on policy objectives now emphasises the need to use the funds to make Europe more inclusive. It also stresses that the Country-Specific Recommendations from the European Semester process should be taken into account in how the funds are spent. This will give the European Semester, a process EDF is heavily involved in, a greater chance of producing practical outcomes for persons with disabilities.

### **Article 4 final text**

1. The ERDF, the ESF+, the Cohesion Fund and the EMFF shall support the following policy objectives:

(d) a more social ***and inclusive*** Europe implementing the European Pillar of Social Rights;

3. Member States and the Commission shall ***~~ensure~~ promote*** the coordination, complementarity and coherence between the Funds and other Union instruments ***~~such as the Reform Support Programme, including the Reform Delivery Tool and the Technical Support Instrument~~*** ***and funds.*** They shall optimise mechanisms for coordination between those responsible to avoid duplication during planning and implementation. ***Accordingly, Member States and the Commission shall also take into account the relevant country-specific recommendations in the programming and implementation of the Funds.***

## Annex III Horizontal Enabling Conditions

The Horizontal Enabling Conditions govern the general criteria for eligibility to use the EU funds covered by the CPR. Here, a new Horizontal Enabling Condition was agreed to during negotiations, requiring Member States to ensure proper implementation of the EU Pillar of Social Rights in order to use the EU funds. This includes ensuring transparent procedures for the involvement of partners and capacity building.

The Horizontal Enabling Conditions also state that Member States must have a “national framework for implementing the UNCRPD” in place that includes objectives with measurable goals, data collection and monitoring mechanism, as well as arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes. Although this was already present in the Commission’s original proposal from 2018, it is a success that it has survived in the final agreement.

### **Horizontal Enabling Conditions final text**

**Name of enabling conditions :** Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC

**Fulfilment criteria:** A national framework for implementing the UNCRPD is in place that includes: 1. Objectives with measurable goals, data collection and monitoring mechanism. 2. Arrangements to ensure that the accessibility policy, legislation and standards are properly reflected in the preparation and implementation of the programmes.

***Arrangements at national level to ensure the proper implementation of the principles of the European Pillar of Social Rights that contribute to upward social convergence and cohesion in the EU, especially the principles preventing unfair competition within the internal market.***

***A framework is in place for all partners to play a fully-fledged role in the preparation, implementation, monitoring and evaluation of programmes, which includes***

***1. Arrangements to ensure transparent procedures for the involvement of partners***

***2. Arrangement for dissemination and disclosure of information relevant for partners to prepare and follow-up meetings***

***3. Support for empowering partners and capacity building***

## Annex IV - Thematic enabling conditions

The Thematic Enabling Conditions fill a similar purpose to the Horizontal Enabling Conditions, albeit with specific requirements linked to the different funds under the CPR. We did not see significant changes here during the negotiations. However, we were pleased to see that important elements were retained by the co-legislators.

Both sections below taken from Annex IV are part of thematic enabling condition 4 on implementing the European Pillar of Social Rights.

The first focuses on “increasing the socioeconomic integration of marginalised communities, migrants and disadvantaged groups, through integrated measures including housing and social services” and “Promoting active inclusion including with a view to promoting equal opportunities and active participation, and improving employability”. It also underlines the need for the Regional Development Fund and the EU Social Fund to focus on combatting poverty and social exclusion, to combat segregation and the adopt measures for the shift from institutional to community-based care. It also states that the design for the use of these funds should be “conducted in close cooperation with social partners and relevant civil society organisations”.

The second section below mentions the need to show “measures to promote community-based services, including prevention and primary care, home-care and community-based services”.

### **Thematic Enabling Conditions final text**

**Policy objective :** 4 -A more social Europe by implementing the European Pillar of Social Rights

**Specific objective :** ERDF: 4.3 increasing the socioeconomic integration of marginalised communities, migrants and disadvantaged groups, through integrated measures including housing and social services

ESF: 4.3.1 Promoting active inclusion including with a view to promoting equal opportunities and active participation, and improving employability;

**Name of enabling condition :** National strategic policy framework for social inclusion and poverty reduction

**Fulfilment criteria for the enabling condition :** A national strategic policy framework for social inclusion and poverty reduction is in place that includes:

1. Evidence-based diagnosis of poverty and social exclusion including child poverty, homelessness, spatial and educational segregation, limited access to essential services and infrastructure, and the specific needs of vulnerable people

2. Measures to prevent and combat segregation in all fields, including through providing adequate income support, inclusive labour markets and access to quality services for vulnerable people, including migrants

3. Measures for the shift from institutional to community-based care

4. Arrangements for ensuring that its design, implementation, monitoring and review is conducted in close cooperation with social partners and relevant civil society organisations.

**Policy objective :** 4 -A more social Europe by implementing the European Pillar of Social Rights

**Specific objective:** ERDF: 4.4 ensuring equal access to health care through developing infrastructure, including primary care

ESF: 4.3.4 Enhancing the equal and timely access to quality, sustainable and affordable services; improving accessibility, effectiveness and resilience of healthcare systems; improving access to long-term care services

**Name of enabling condition :** Strategic policy framework for health.

**Fulfilment criteria for the enabling condition :** A national or regional strategic policy framework for health is in place that contains:

1. Mapping of health and long-term care needs, including in terms of medical staff, to ensure sustainable and coordinated measures

2. Measures to ensure the efficiency, sustainability, accessibility and affordability to health and long-term care services, including specific focus on individuals excluded from the health and long-term care systems

3. Measures to promote community-based services, including prevention and primary care, home-care and community-based services.

## Article 106 - Determination of co-financing rates

There was a risk that the amount of co-financing offered by the EU funds to beneficiaries would be reduced quite considerably. This would mean that any organisations hoping to make use of EU funds would need to use more of their own money. It would have made it difficult for smaller organisations to get access to funding. EDF advocated extensively on this point. Fortunately, the reductions for some regions were mitigated and did not reach the levels seen in the Commission’s 2018 proposal. Unfortunately, for the most developed regions appears to remain low, with a co-financing rate of only 40%.

### **Article 106 final text**

1. ***~~70~~ 85*** % for the less developed regions;

***(a bis) 70% for transition regions that were classified as less developed regions in the 2014-2020 programming period;***

1. ***~~55~~*** ***60*** % for the transition regions

***(b bis) 50% for more developed***

1. 40% for the more developed regions.

## Article 25 - Community-led local development

Article 25 on community-led local development now specifies the need to be supportive of accessibility.

### **Article 25 final text**

1. ***Where the Member State considers it appropriate pursuant to Article 22***, the ERDF, the ESF+, ***the JTF*** and the EMFF may shall support community-led local development.

2. The Member State shall ensure that community-led local development is:

d) supportive of networking, ***accessibility***, innovative features in the local context and, where appropriate, cooperation with other territorial actors.

## Article 27 - Local action groups

Similarly to the addition to Article 25, Article 27 on local action groups now includes the need for such groups to be “inclusive”.

### **Article 27 final text**

2. The managing authorities shall ensure that the local action groups ***are inclusive, and that they*** either select one partner within the group as a lead partner in administrative and financial matters, or come together in a legally constituted common structure,

## Article 34 - Composition of the monitoring committee

Article 34 talks about the composition of the monitoring committee overseeing the implementation of the regulation and the use of the funds in different Member States. It is important that civil society organisations have access to this and understand how the committee is formed. It is for this reason that we have been calling for there to be a requirement to make this process transparent, although the actual form this might take will certainly vary between Member States and we do not yet know how the national Managing Authorities will interpret this wording.

### **Article 34 final text**

1. The Member State shall determine the composition of the monitoring committee and shall ensure a balanced representation of the relevant Member State authorities and intermediate bodies and of representatives of the partners referred to in Article 6 ***through a transparent process.***

# **Areas of disappointment**

## Article 84 – Pre-financing

EDF had been advocating for an increase in the pre-financing rates for beneficiaries making use of the EU funds covered by the CPR. This would make it easier for smaller organisations to make use of them with lower risks to their finances and cashflow. Unfortunately, the Commission’s original proposal was retained by the co-legislators.

|  |  |
| --- | --- |
| Commission proposal | EDF amendments |
| Article 17(3)(f)(i).  2. The pre-financing for each Fund shall be paid in yearly instalments before 1 July of each year, subject to availability of funds, as follows:  (a) 2021: 0.5 %;  (b) 2022: 0.5 %;  (c) 2023: 0.5 %;  (d) 2024: 0.5 %;  (e) 2025: 0.5 %;  (f) 2026: 0.5 %  Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.  3. By way of derogation from paragraph 2, for Interreg programmes, specific rules on pre-financing shall be set out in the ETC Regulation.  4. The amount paid as pre-financing shall be cleared from the Commission accounts no later than with the final accounting year. | 1. The Commission shall pay pre-financing based on the total support from the Funds set out in the decision approving the programme pursuant to Article 17(3)(f)(i).  ***2. An initial pre-financing of 5% will be allocated.***  2. The pre-financing for each Fund shall be paid in yearly instalments before 1 July of each year, subject to availability of funds, as follows:  (a) 2021: ***~~0.5~~*** **1%;**  (b) 2022: ***~~0.5~~*** **1%;**  (c) 2023: ***~~0.5~~*** **1%;**  (d) 2024: ***~~0.5~~*** **1%;**  (e) 2025: ***~~0.5~~*** **1%;**  (f) 2026: ***~~0.5~~*** **1%**  Where a programme is adopted after 1 July 2021, the earlier instalments shall be paid in the year of adoption.  3. By way of derogation from paragraph 2, for Interreg programmes, specific rules on pre-financing shall be set out in the ETC Regulation.  4. The amount paid as pre-financing shall be cleared from the Commission accounts no later than with the final accounting year. |

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This position paper does not necessarily reflect the opinion of the European Commission