**Commission’s reply to the questions from the Czech Republic on ex-ante conditionalities, 22/7/13**

1. How will the EC assess the ex-ante conditionalities in case that infringement proceedings have already been opened by the Commission:

 - Will the concrete phase of the proceeding (formal notice, reasoned opinion) be taken into consideration when assessing the ex-ante conditionality?

 - Will the Commission always assess each case individually depending on the subject or the phase of the proceedings.

COM reply: The infringements proceedings will only be taken into consideration by the Commission when assessing the information provided by MS in the PA and programmes on fulfilment of ex ante conditionalities when they are directly linked to the criteria for fulfilment as set out in Annex V CPR. This will be assessed case-by case basis.

1. We would appreciate, if we could obtain further guidance on the methodology, that shall be used
for the ex-ante conditionalities: Thematic objective 3.1., Enhancing
the competiveness of small and medium-sized enterprises, and the Thematic objective 8.2., Promoting employment and supporting labour mobility, criterion – measures to reduce the time to set up businesses and the costs, in order to properly fulfil these ex-ante conditionalities (e.g.to be more precise, which fees are included under the amount of € 100 that is defined / required as a maximum amount for setting up a business, and how exactly is the time to setup business calculated).

The Ministry of Justice and the Ministry of Industry and Trade have made a significant progress concerning this issue, namely by the adoption of the new Act on Business Corporations
or the amendment to the Trade Licensing Act, but it still remains unclear what methodology
and calculations are behind the identification of the original values. The Council Conclusions on the Review of the „Small Business Act“ for Europe, as adopted by the Council (Competiveness) on 30 May 2011, just stated the amount and days, but without any further explanations. (The OECD is probably using a different methodology, because the data concerning this issue and regarding
the Czech Republic differs from the data published by the European Commission).

COM reply: Please see below the methodology used to calculate the time and cost to start a business:

<http://ec.europa.eu/enterprise/policies/sme/files/support_measures/start-ups/sec_2007_129_en.pdf>,

as well as the most recent results for EU's member states:

<http://ec.europa.eu/enterprise/policies/sme/files/support_measures/start-ups/sec_2007_129_en.pdf>

and more general information in start-up procedures:

<http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/index_en.htm>.

As regards licensing procedures, DG ENTR has commissioned a study on this (see the link to the final report):

<http://ec.europa.eu/enterprise/policies/sme/business-environment/start-up-procedures/index_en.htm>

3) We would like also to raise a question regarding the fulfilment of the ex ante conditionality

TC 5 “Risk prevention and management” with regards to the following conditions:

- a national or regional risk assessment with the following elements shall be in place:

- description of the process, methodology, methods and non-sensitive data used for risk assessment as well as of the risk-based criteria for the prioritisation of investment;  description of single-risk
and multi-risk scenarios;

What the nature of the documents should be? Is it possible to consider documents such as yearly status reports, resolutions (governmental), internal acts of the Ministry of Interior or of the Fire Rescue Service o the CZ as sufficient for fulfilling the above mentioned parts of the ex ante conditionality? Do they have to cover the whole programming period? Does it have to cover national as well as regional levels?

COM reply: The required document on national or regional risk assessment should cover the entire programming period. It should cover national or regional levels depending on the coverage of the specific programme, taking into account subsidiarity of MS competences in this area. It is possible to use the existing relevant documents, however a consistency between those needs to be ensured.

See the link to “risk assessment guidelines " published by the Commission:

<http://register.consilium.europa.eu/pdf/en/10/st17/st17833.en10.pdf>

4) We would like to ask for information on what provisions EC believe, that the collection of personal and sensitive data in relation to the regulation is possible. Or whether it is possible
for the Commission to perform some steps to solve the problem (see, eg, specific modification of the model EAFRD regulation, where the collection of personal data specifically anchored see Article 92a)
in order to meet the requirements of the general ex-ante conditionality no. 7 “Statistical systems
and result indicators” (to ensure the collection and evaluation of micro participating interventions”
 - see Guidance document for programming Period 2014-2020 Monitoring and Evaluation
 of European Cohesion Policy, European Social Fund) .

According to the Office for Personal Data Protection, ESF Regulation Proposal only lays down
an obligation to communicate summary, not personal or sensitive data, and therefore regulation is not a sufficient legal basis for access to registers and processing of such data, since the regulation only requires sending aggregated data to the SFC. This is in relation to national legislation obstacle
 to the collection of personal and sensitive data and the fundamental obstacle to setting monitoring implementation and results of interventions. However, without sufficient authorization to access and process relevant data the managing authorities are not able to guarantee the fulfillment of this ex-ante conditionality.

COM reply: In line with “Programming Period 2014-2020  Monitoring and Evaluation of European Cohesion Policy European Social Fund Guidance document - Draft – of 9 January 2013”, the Commission does not require to receive the micro data but solely aggregated data sets of ESF and match funded operations.

The legal basis for recording and storing data on individual participants is set out in the CPR provisions in art. 114.2, according to which the managing authority shall establish a system to record and store in computerised from data on each operation necessary for monitoring, evaluation, financial management, verification and audit, including data on individual participants in operations, where applicable.

The Commission intends to introduce further safeguards for the protection of personal data in secondary legislation to be adopted based on Article 114(8) CPR.