



Brussels, 23 October 2020
(OR. en)

11939/20

LIMITE

SOC 620
EMPL 448
FSTR 166
CADREFIN 329
REGIO 251
CODEC 1002

Interinstitutional File:
2020/0105(COD)

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
No. Cion doc.:	8400/20 - COM(2020) 223 final
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the COVID-19 crisis - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 28 May 2020, the Commission transmitted to the Council the proposal for a Regulation amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the COVID-19 crisis (the Fund for the Most Deprived (FEAD), doc. 8400/20).
2. In order to help Member States to provide effective response to the COVID-19 pandemic, including its social and economic consequences, the Commission proposes to provide additional resources to the FEAD. The allocation of additional resources should be voluntary for Member States, according to their specific needs. In considering this, Member States should pay due attention to the increases in the number of the most deprived during the crisis associated with the outbreak of the COVID-19.

3. The European Parliament adopted its first reading mandate during the plenary session of 5 to 8 October 2020.
4. The European Economic and Social Committee and the Committee of the Regions have been consulted on the proposal.

II. **PRESIDENCY COMPROMISE TEXT FOR A COUNCIL NEGOTIATING MANDATE**

5. The Working Party on Social Questions examined the Commission proposal during two meetings (one in June, one in October). On 9 October, there was a broad acceptance to the Presidency compromise text. The main discussion point was ensuring that the FEAD support to be provided with additional funding based on the draft Regulation would fulfil the requirements of the REACT-EU (to be exclusively allocated to actions directed at addressing the consequences of the outbreak of COVID-19) and not create unnecessary administrative burden (checking that the recipients of the FEAD support would need the support because of the outbreak). The Presidency's compromise proposal, as set out in the Annex to this note, explains the connection between the crisis and the additional FEAD funding in recital 4 (*"the Fund supports one of the categories of people most heavily affected by the crisis associated with the outbreak of COVID-19"*) and in recital 6 (*"These additional resources are provided to support actions directed at addressing the consequences of the outbreak of COVID-19, notably its economic and social impact"*).

All delegations are considered to have scrutiny reservations on the final formulations of recitals 4 and 6 and of Article 6a(1).

6. Throughout the preparatory process, the Presidency has stressed that the work (including the interinstitutional negotiations) on the REACT-EU proposal has to be sufficiently advanced before concluding on the current draft Regulation amending the FEAD Regulation. As a part of the REACT-EU alignment, recital 10a has been added to the text in the Annex. The final text of the FEAD Regulation must be verified against the finalised REACT-EU Regulation.

7. The changes to the Commission proposal are indicated in **bold** and deletions by [...]. In addition, the text includes a number of legal linguistic suggestions in *italics*. Following the European Council meeting of 21 July, the text does not include brackets; changes following the EUCO conclusions¹ are explained in footnotes to the text.

III. CONCLUSION

8. On that basis, the Permanent Representatives Committee is invited to examine the compromise text as set out in the Annex of this note with a view of reaching agreement on the Council's negotiation mandate for informal first reading trilogues.

¹ EUCO 10/20

Draft

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 223/2014 as regards the introduction of specific measures for addressing the *crisis associated with the outbreak of COVID-19* [...]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 175(3) and 322(1)(a)² thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee³,

After consulting the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EU) No 223/2014 of the European Parliament and of the Council⁵ lays down rules applicable to the Fund for European Aid to the Most Deprived (*‘the Fund’*).

² The suggestion to add another legal basis is linked to the derogations to the Financial Regulation inserted below.

³ EESC Opinion SOC/657 dated 10.6.2020.

⁴ The Committee of Regions decided not to issue an opinion (email 23.7.2020).

⁵ Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived (OJ L 72, 12.03.2014, p. 1).

- (2) On 17 November 2017, the European Pillar of Social Rights was jointly proclaimed by the European Parliament, the Council and the Commission as a response to social challenges in Europe. The twenty [...] principles of the pillar are structured around three categories: equal opportunities and access to the labour market; fair working conditions; social protection and inclusion. The twenty principles of the European Pillar of Social Rights should guide the actions in response to the *crisis associated with the outbreak of COVID-19 [...]* in order to ensure a socially fair recovery.
- (3) Member States have been affected by the consequences of the *crisis associated with the outbreak of COVID-19 [...]* in an unprecedented manner. The crisis has led to severe economic and social consequences. This has created an exceptional situation which needs to be addressed with specific measures *also taking into account* the European Pillar of Social Rights. **The outbreak of COVID-19 also has disproportionate socio-economic effect on women and girls. Therefore, the Commission and Member States should continue ensuring the equality between men and women and the integration of gender perspective during the different stages and in all activities of the Fund.**
- (4) This *crisis* has a particular impact on the *Fund*, **which supports one of the categories of people most heavily affected by the crisis associated with the outbreak of COVID-19.** Considering that the number of people suffering from food and material deprivation has been increasing due to the *outbreak of COVID-19 [...]* and that the most deprived are exposed to particular risks and further hardships during this crisis. **Moreover, the outbreak of COVID-19 puts the social inclusion of the most deprived at risk. Therefore, Member States are facing additional funding needs in the delivery of support by the Fund to address the consequences of the outbreak of COVID-19.**

- (5) In order to redress huge shocks to the economy and serious impacts on the functioning of the Single Market due to exceptional restrictions put in place by Member States to contain the *outbreak of* COVID-19 [...], **the Members of** the European Council **welcomed**⁶ on 23 April 2020 the “Roadmap for recovery” with a strong investment component, called for the establishment of the European **Union** Recovery Instrument and *tasked* the Commission to analyse the needs so that the resources are targeted towards the sectors and geographical parts of Europe most affected, while clarifying also the link with the MFF.

⁶ See the press release of the President of EUCO, 23 April 2020.

- (6) [...] Regulation [XXXX] ⁷ amending Council Regulation (EU, EURATOM) No 1311/2013⁸ on 27 May 2020 **unlocks** additional resources to support Member States in crisis repair in the context of the COVID-19 pandemic and preparing the recovery of the economy. As part of this package, an additional exceptional amount of EUR **47 500 000 000**⁹ for budgetary commitment from the Structural Funds under the Investment for growth and jobs goal, for the years [...] 2021 and 2022 is made available for this purpose, with a view to deploying them quickly for the real economy through the existing structures for the 2014-2020 cohesion policy programmes. The Commission should set out the breakdown of the additional resources for each Member State on the basis of an allocation method based on the latest available objective statistical data concerning Member States' relative prosperity and the extent of the effect of the current crisis on their economies. In order to reflect the evolving nature of the effects of the crisis, the breakdown should be revised in 2021 on the basis of the same allocation method using the latest statistical data available by 19 October 2021. In order to provide for an effective response to the social impact of the *outbreak of COVID-19* [...] on the most deprived, **including the impact of their social inclusion**, it is appropriate that the additional resources may be allocated by Member States to the *Fund*, in accordance with their needs. **These additional resources are provided to support actions directed at addressing the consequences of the outbreak of COVID-19, notably its economic and social impact.** In doing so, Member States should pay due attention to the increases in the number of the most deprived since the *outbreak of COVID-19*[...]. In addition, it is necessary to establish ceilings concerning the allocation of the increased resources to technical assistance of the Member State. Taking account of the expected quick spending of the additional resources, the commitments linked to these additional resources should also be decommitted at the closure of the programmes. Possibilities for financial transfers under the Investment for Growth and Jobs goal between the ERDF, the ESF and the *Fund* are also introduced for the additional resources.¹⁰

⁷ REACT-EU when adopted. Proposal [COM\(2020\) 446](#).

⁸ Council Regulation (EU, EURATOM) No 1311/2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁹ As per the July 2020 EUCO conclusions

¹⁰ To be checked against the REACT-EU Regulation.

- (7) Horizontal financial rules adopted by the European Parliament and the Council on the basis of Article 322 of the Treaty on the Functioning of the European Union (*‘TFEU’*) apply to this Regulation. These rules are laid down in the Financial Regulation and determine in particular the procedure for establishing and implementing the budget through grants, procurement, prizes, indirect implementation, and provide for checks on the responsibility of financial actors. Rules adopted on the basis of Article 322 TFEU also concern the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, as the respect for the rule of law is an essential precondition for sound financial management and effective EU funding.¹¹
- (8) In order to ensure that Member States have sufficient financial means to swiftly implement crisis repair actions in the context of the *outbreak of COVID-19 [...]* and prepare the **social and resilient** recovery of the economy, it is necessary to provide a higher level of pre-financing payment for the quick implementation of actions supported by the additional resources. The magnitude of the pre-financing should ensure that Member States have the means to arrange for advance payments to beneficiaries where necessary and to reimburse beneficiaries quickly following the submission of payment claims.
- (9) With a view to alleviating the burden on public budgets regarding crisis repair in the context of the *outbreak of COVID-19 [...]* and preparing the **social and resilient** recovery of the economy, it is appropriate that the additional resources **to the Fund**¹² are not subject to co-financing.
- (10) In order to ensure that Member States can quickly adjust the measures under the *Fund* in response to *the crisis associated with the outbreak of COVID-19 [...]*, it is appropriate to set out specific provisions clarifying the scope of technical assistance.
- (10a) In accordance with Regulation [European Union Recovery Instrument] and within the limits of resources allocated therein, measures under this Fund should be carried out to address the unprecedented impact of the COVID-19 crisis. Such additional resources should be used in such a way as to ensure compliance with the time limits provided for in Regulation [ERI].**

¹¹ Following the EUCO conclusions (EUCO 10/20) the last sentence *on rule of law and financial management* is no longer in brackets.

¹² Cf. Article 6a(new)(4)

- (11) Since the objective of this Regulation, namely to respond to the impact of the **outbreak of COVID-19** on the most deprived, cannot be sufficiently achieved by the Member States *but can rather*, by reason of *its* scale and effects [...], be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('*TEU*'). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve *that* objective.
- (12) [...]¹³
- (13) [...]¹⁴
- (14) [...]¹⁵

¹³ Moved to the end of recitals.

¹⁴ The FEAD Regulation is not urgent. Cf. Article 2 ("*twentieth day*").

¹⁵ Deleted as not applicable.

- (15) Article 135(2) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community provides that amendments to Council Regulation (EU, Euratom) No 1311/2013¹⁶ or to Council Decision 2014/335/EU, Euratom that are adopted on or after the date of entry into force of that Agreement shall not apply to the United Kingdom insofar as those amendments have an impact on the United Kingdom's financial obligations. The support under Article 6a of Regulation (EU) No 223/2014 is financed, [...] ¹⁷ for 2021 and 2022, from an increase of the own resources ceiling of the Union, which would have an impact on United Kingdom's financial obligation. Therefore, this *support*¹⁸ should not apply to and in the United Kingdom,
- (16) *Regulation (EU) No 223/2014 should therefore be amended accordingly,*

HAVE ADOPTED THIS REGULATION:

¹⁶ Council Regulation (EU, Euratom) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).
¹⁷ Year 2020 removed, following the July 2020 EUCO.
¹⁸ To align with Article 63a, which only refers to Article 6a.

Article 1

Regulation (EU) No 223/2014 is amended as follows:

- (1) Article 6(2) is replaced by the following:

“2. The allocation of the Fund for the period 2014–2020 for every Member State is set out in Annex III except for the increased resources in response to the *outbreak of COVID-19* [...] referred to in Article 6a. The minimum amount for each Member State is EUR 3 500 000 for the whole period.”

- (2) the following *article* is inserted:

“Article 6a

Voluntary increase of resources in response to the outbreak of COVID-19 [...]

1. The resources referred to in Article 6 may be increased by Member States on a voluntary basis in response to the *outbreak of COVID-19* [...], in accordance with the seventh subparagraph of point 5 of Article 92b¹⁹ of Regulation (EU) No 1303/2013. **The additional resources shall constitute external assigned revenues as set out in Article 3(1) of Regulation [ERI] and shall be subject to Article 3(3), (4), (7) and (9) thereof. The increase may affect the budgetary commitments for [...] 2021 and 2022.**²⁰

¹⁹ To be verified with the REACT-EU.

²⁰ On the years, cf. the EUCO conclusions.

2. By way of derogation from Article 7(1) the period for operational programmes benefitting from additional resources in accordance with paragraph 1 shall be until 31 December 2022²¹.
3. By way of derogation from the first sub-paragraph of Article 38, the budget commitments for the additional resources in respect of each programme shall be made in the years [...] 2021 and 2022²².

The legal commitment for the years 2021 and 2022 shall enter into force as of the date referred to in Article 3(4) of the [ERI Regulation].²³

By way of derogation from Article 14(3) of the Financial Regulation, the de-commitment rules set out in Title VI Chapter 4 shall apply to the budgetary commitments based on the additional resources referred to in paragraph 1.

By derogation from Article 12(4)(c) of the Financial Regulation, the additional resources shall not be used for a succeeding programme or action.²⁴

By way of derogation from Article 59(1), the additional commitments shall be decommitted in accordance with the rules to be followed for the closure of the programmes.

4. In addition to the pre-financing referred to in Article 44(1), the Commission shall pay a pre-financing amount of **11%** of the additional resources allocated for the year **2021** following the Commission decision approving the amendment to a programme for the allocation of the additional resources.

The amount paid as **initial** pre-financing as referred to in the first sub-paragraph shall be totally cleared from the Commission accounts not later than when the programme is closed.²⁵

²¹ On the date, cf. EUCO conclusions.

²² On the years, cf. EUCO conclusions.

²³ This paragraph to be checked against the final REACT EU text.

²⁴ The new wording in order to align with the REACT EU.

²⁵ The pre-financing level of 11% is aligned with the REACT-EU.

5. By way of derogation to Article 20, the additional resources under paragraph 1 are not subject to co-financing.”

(3) in Article 27, paragraph 4 is replaced by the following:

“4. At the initiative of the Member States, and subject to a ceiling of 5% of the Fund allocation at the time of the adoption of the operational programme and 5% on the additional resources referred to in Article 6a(1), the operational programme may finance preparation, management, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementation of the Fund, including the preparation and operating costs of voucher schemes in case these costs are borne by the managing authority or another public body, that is not a partner organisation. It may also finance technical assistance and capacity building of partner organisations and any other actors involved in the implementation of the Fund, including for fostering crisis response capacity to the *outbreak of COVID-19* [...]. The actions referred to in this paragraph may concern the subsequent programming period²⁶, including to ensure the continuation of the support by this Fund through other Funds.”

(4) the following *article* is inserted:

“*Article 63a*

Transitional provisions

Article 6a shall not apply to and in the United Kingdom. References to Member States in those provisions shall be understood as not including the United Kingdom.”

²⁶ To check consistency with the REACT-EU

Article 2

This Regulation shall enter into force on the **twentieth** day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President
