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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	7154/20
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak - Mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 2 April 2020, the Commission transmitted to the Council the proposal for a Regulation amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak (doc. 7154/20), know as "Coronavirus Response Investment Initiative PLUS".

2. Following the entry into force of the first set of measures part of the "Coronavirus Response Investment Initiative", the Commission has proposed a second package of measures to further increase the flexibility, as a temporary and exceptional measure, on the management of the European Structural and Investments Funds. The new Commission proposal provides the temporary possibility of 100% co-financing from the EU budget for the implementation of cohesion policy programmes, as well as additional transfer possibilities between the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund, and between categories of regions. Additionally, it is proposed to exempt Member States from the need to comply with thematic concentration requirements, to enable a redirection of resources to the areas most impacted by the current public health crisis.

II. PRESIDENCY COMPROMISE PROPOSAL

3. On 3 April 2020, the Permanent Representatives Committee held an exchange of views on the Union's Coronavirus Response, including the proposal for amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 (Common Provisions Regulation and ERDF Regulation for the 2014-2020 period, respectively), subject of this note.

4. The Working Party on Structural Measures examined the Commission proposal at its meeting on 6 April 2020. The majority of delegations gave support to the proposal, including preference for a speedy adoption of the legal act.

5. The Working Party did not object to the Presidency's approach of proceeding by taking over the Commission's proposal, as set out in the Annex to this note.

III. SUBMISSION TO COREPER

6. On that basis, the Permanent Representatives Committee is invited to:

- confirm the agreement reached in favour of the compromise package concerning the proposal for a Regulation amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak, as set out in the Annex to this note.

- authorise the Presidency to send a letter to the Chair of the European Parliament's Committee on Regional Development confirming that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

ANNEX

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak

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 177, 178 and 322(1)(a) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2]

Having regard to the opinion of the European Court of Auditors,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Member States have been affected by the consequences of the COVID-19 outbreak crisis in an unprecedented manner. The crisis hampers growth in Member States, which in turn aggravates the serious liquidity shortages due to the sudden and important increase in public investments needed in their health care systems and other sectors of their economies. This has created an exceptional situation which needs to be addressed with specific measures.

(2) In order to respond to the impact of the crisis, Regulations (EU) No 1303/2013 and (EU) No 1301/2013 have already been amended to allow more flexibility in the implementation of the programmes supported by the European Regional Development Fund ('ERDF'), the European Social Fund ('ESF') and the Cohesion Fund (the 'Funds') and by the European Maritime and Fisheries Fund ('EMFF'). In order to contribute to an effective response to the current crisis, the scope of support from the ERDF was considerably expanded.

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1 OJ C , , p. .
2 OJ C , , p. .

(3) However, the serious negative effects on EU economies and societies are becoming worse. It is necessary therefore to provide exceptional additional flexibility to Member States to enable them to respond to this unprecedented crisis by enhancing the possibility to mobilise all non-utilised support from the Funds.

(4) With a view to alleviating the burden on public budgets responding to the crisis situation, Member States should be given the exceptional possibility to request for cohesion policy programmes a co-financing rate of 100% to be applied for the accounting year 2020-2021, in accordance with budget appropriations and subject to available funding. Based on an assessment of the application of this exceptional co-financing rate, the Commission may propose an extension of this measure.

(5) In order to provide enhanced flexibility to Member States for the reallocation of resources with a view to provide tailor-made responses to the public health crisis, possibilities for financial transfers under the Investment for Growth and Jobs goal between the ERDF, the ESF and the Cohesion Fund should be introduced or enhanced. Furthermore, transfer possibilities between categories of regions should also be exceptionally increased for Member States given the widespread impact of the public health crisis, while respecting Treaty objectives for cohesion policy. Resources under the European territorial cooperation goal, the additional allocations to outermost regions as well as support to the Youth Employment Initiative and the Fund for European Aid to the most Deprived should not be affected by such transfers.

(6) In order to enable Member States to quickly deploy available resources to respond to the COVID-19 outbreak and taking into account that, given the advanced stage of implementation of the 2014-2020 programming period, reallocation of resources may only concern resources available for programming for the year 2020, it is justified to exceptionally exempt Member States from the need to comply with thematic concentration requirements until the end of the programming period.

(7) In order to enable Member States to concentrate on the necessary response to the COVID-19 outbreak and to reduce administrative burdens, certain procedural requirements linked to programme implementation and audits should be simplified. In particular, Partnership Agreements should no longer be amended until the end of the programming period neither to reflect prior changes in operational programmes nor to introduce any other changes. The deadline for the submission of the annual implementation reports for the year 2019 should be postponed, as should be the transmission of the Commission's summary report based on those annual implementation reports. As regards the Funds and the EMFF, an extended possibility for audit authorities to make use of a non-statistical sampling method should also be explicitly provided for in respect of the accounting year 2019-2020.

(8) It is also appropriate to specify that eligibility of expenditure is exceptionally allowed for completed or fully implemented operations fostering crisis response capacity in the context of the COVID-19 outbreak. Such operations may be selected even before the necessary programme amendment is approved by the Commission. In addition, specific modalities for invoking *force majeure* in the context of decommitment should be provided for.

(9) In addition, in order to reduce administrative burdens and delays in implementation where changes in financial instruments are necessary to provide an effective response to a public health crisis, the review and update of the ex-ante assessment and updated business plans or equivalent documents as part of the supporting documents demonstrating that support provided was used for its intended purpose should no longer be required until the end of the programming period. In addition, the possibilities for the support for working capital through financial instruments under the EAFRD should be extended.

(10) In order to ensure that Member States can make full use of support from the Funds or the EMFF, additional flexibility should be provided for the calculation of the payment of the final balance at the end of the programming period.

(11) In order to facilitate the transfers authorised under this Regulation, the condition laid down in Article 30(1)(f) of the Financial Regulation regarding use of appropriations for the same objective should not apply in respect of transfers proposed under this Regulation.

(12) In order to ensure consistency between the approach taken under the Temporary Framework for State Aid Measures to support the economy in the current COVID-19 outbreak and de minimis aid on the one hand and conditions for providing support to undertakings in difficulty under the ERDF on the other, Regulation (EU) No 1301/2013 should be amended to allow for the granting of support to such undertakings in these specific circumstances.

(13) Since the objectives of this Regulation, namely to respond to the impact of the public health crisis by introducing flexibility measures in the field of providing support from the ESI Funds, cannot be sufficiently achieved by the Member States alone and can therefore, by reason of the scale and effects of the proposed action, 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. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(14) Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 should therefore be amended accordingly.

(15) Given the urgency of the situation related to the COVID-19 outbreak, it is appropriate that this Regulation enters into force on the date of its publication in the *Official Journal of the European Union*.

(16) In view of the COVID-19 outbreak and the urgency to address the associated public health crisis, it is considered necessary to use the exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendments to Regulation (EU) No 1303/2013

Regulation (EU) No 1303/2013 is amended as follows:

(1) the following new Chapter is added in Title II of Part Two:

"CHAPTER V

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak";

"Article [25a]
Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

1. By way of derogation from Article 60(1) and the first and fourth subparagraph of Article 120(3), at the request of the Member State, a co-financing rate of 100% may be applied to expenditure declared in payment applications during the accounting year starting on 1 July 2020 and ending on 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

   Requests for modification of the co-financing rate shall be made through the procedure for amendment of programmes set out in Article 30 and shall be accompanied by the revised programme or programmes. The 100% co-financing rate shall only apply if the corresponding programme amendment is approved by the Commission at the latest before the submission of the final application for an interim payment in accordance with Article 135(2) CPR.

   Before submitting the first payment application for the accounting year starting on 1 July 2021, Member States shall notify the table referred to in Article 96(2)(d)(ii), confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100%.

2. In response to the COVID-19 outbreak, the resources available for programming for the year 2020 for the Investment for Growth and Jobs goal may, at the request of the Member States, be transferred between the ERDF, the ESF and the Cohesion Fund, irrespective of the percentages referred to in points (a) to (d) of Article 92(1).

   For the purpose of these transfers, the requirements laid down in Article 92(4) shall not apply.

   Transfers shall not affect resources allocated to the YEI in accordance with Article 92(5) and to the aid for the most deprived under the Investment for Growth and Jobs goal in accordance with Article 92(7).

Resources transferred between the ERDF, the ESF and the Cohesion Fund under this paragraph shall be implemented in accordance with the rules of the Fund to which the resources are transferred.

3. By way of derogation from Article 93(1) and in addition to the possibility provided for in Article 93(2), resources available for programming for the year 2020 may, at the request of the Member States, be transferred between categories of regions in response to the COVID-19 outbreak.

4. Requests for transfers under paragraphs 2 and 3 shall be made through the procedure for amendment of programmes set out in Article 30, shall be duly justified and shall be accompanied by the revised programme or programmes identifying the amounts transferred by Fund and by category of region, where relevant.

5. By way of derogation from Article 18 and Fund-specific Regulations, financial allocations set out in requests for programme amendments submitted or transfers notified pursuant to Article 30(5), on or after [the date of the entry into force of this Regulation], shall not be subject to requirements on thematic concentration as set out in this Regulation or the Fund-specific Regulations.

6. By way of derogation from Article 16, as from [date of entry into force of this Regulation], Partnership Agreements shall not be amended and programme amendments shall not entail the amendment of Partnership Agreements.

   By way of derogation from Articles 26(1), 27(1), 30(1) and 30(2), as from [*date of* entry *into force of this Regulation*] the consistency of programmes and of their implementation with the Partnership Agreement shall not be verified.

7. For operations fostering crisis response capacities in the context of the COVID-19 outbreak as referred to in the second sub-paragraph of Article 65(10), Article 65(6) shall not apply.

   By way of derogation from Article 125(3)(b), such operations may be selected for support by the ERDF or the ESF prior to the approval of the amended programme.

8. For the purposes of Article 87(1)(b), where the COVID-19 outbreak is invoked as a reason of force majeure, information on the amounts for which it has not been possible to make a payment application shall be provided at an aggregate level by priority for operations of total eligible costs of less than EUR 1 000 000.

9. The annual report on implementation of the programme referred to in Article 50(1) for the year 2019 shall be submitted by 30 September 2020 for all ESI Funds, by way of derogation from the deadlines set out in Fund-specific Regulations. The transmission of the summary report prepared by the Commission in 2020, in accordance with Article 53(1), may be postponed accordingly.

10. By way of derogation from Article 37(2)(g), no review or update of the ex-ante assessments shall be required where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak.

11. Where financial instruments provide support in the form of working capital to SMEs pursuant to the second subparagraph of Article 37(4) [inserted by the CRII amendment], new or updated business plans or equivalent documents and evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as part of the supporting documents shall not be required.

    By way of derogation from Regulation (EU) No 1305/2013, such support may also be provided by the EAFRD under measures referred to in Regulation (EU) No 1305/2013 and relevant to the implementation of financial instruments. Such eligible expenditure shall not exceed EUR 200 000.

12. For the purposes of the second subparagraph of Article 127(1), the COVID-19 outbreak shall constitute a duly justified case that audit authorities may invoke based on their professional judgement to use a non-statistical sampling method for the accounting year starting on 1 July 2019 and ending on 30 June 2020.

13. For the purposes of application of Article 30(1)(f) of the Financial Regulation, the condition of appropriations being for the same objective shall not apply in respect of transfers under paragraphs 2 and 3";

(2) in Article 130, the following paragraph 3 is added:

"3. By way of derogation from paragraph 2, the contribution from the Funds or the EMFF through payments of the final balance for each priority per Fund and per category of regions in the final accounting year shall not exceed, by more than 10%, the contribution from the Funds or the EMFF for each priority per Fund and per category of regions as laid down in the decision of the Commission approving the operational programme.

The contribution from the Funds or the EMFF through payments of the final balance in the final accounting year shall not exceed the eligible public expenditure declared and the contribution from each Fund and category of regions to each operational programme as laid down in the decision of the Commission approving the operational programme.".

Article 2

Amendment to Regulation (EU) No 1301/2013

Point (d) of Article 3(3) Regulation (EU) No 1301/2013 is replaced by the following:

> Undertakings in difficulty as defined in Union State aid rules; undertakings receiving support complying with the State aid Temporary Framework[3] or Commission Regulations (EU) No 1407/2013[4], (EU) No 1408/2013[5] and (EU) No 717/2014[6] shall not be regarded as undertakings in difficulty for the purposes of this point.".

Article 3

This Regulation shall enter into force on the day 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*

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3 OJ C 91 I, 20.3.2020, p. 1.

4 Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1).

5 Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013 p. 9).

6 Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).