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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2018) 460 final
Subject:	Regulation establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI) Thematic package: Governance (cushion, delegated acts, flexibility, committee) - State of play and guidance for further work

DELETED FROM THIS POINT UNTIL THE END OF THE COLUMN (page 2)

Delegations will find enclosed the thematic package on governance (cushion, delegated acts, flexibility, committee).

Draft
Regulation of the European Parliament and of the Council
establishing the Neighbourhood, Development and International Cooperation Instrument (NDICI)

Thematic package: Governance (cushion, delegated acts, flexibility, committee) REV2

NB. Delegations are informed that the final wording of line 451 is linked to deliberations on the EFSD+ and will therefore be decided at a later stage.

In order to reach an agreement between MS on the governance of the NDICI instrument, RO PCY is proposing a complementary statement by the Council of the European Union on the oversight of the implementation of the NDICI Regulation. This draft statement incorporates concerns of Member States regarding the governance of the NDICI instrument within the Council and should be considered in conjunction to the text of the Regulation. The draft statement should be recorded in the minutes of the Council or COREPER in the context of the Partial General Approach on NDICI/MFF.

“Draft statement by the Council of the European Union on the oversight of the implementation of the NDICI Regulation

*The Council notes that the Regulation (EU) No [...] of the European Parliament and of the Council of [...] establishing the Neighborhood, Development and International Cooperation Instrument (NDICI) for the period 2021-2027 streamlines [10] former instruments into one broad and comprehensive instrument. This change requires increased coordination and strategic oversight **within the Council** of the implementation of the instrument, primarily to ensure the consistency of the Union’s policies and actions financed through EU external assistance. The Council will **therefore** provide strategic guidance in order to supplement the policy framework for the implementation of the NDICI **in line with Article 7**.*

*While respecting the division of competences and roles between the EU institutions, the Council therefore intends to regularly exchange views and follow-up on the principal policy objectives and priorities of the instrument including the use and monitoring of unallocated funds, the emerging challenges and priorities cushion, the strategic priorities and resource allocation within the geographic and thematic envelopes, investment windows, the rapid response actions including exceptional assistance measures, the monitoring of spending targets, geographic and thematic evaluations, suspension of EU external assistance under the instrument **and the coherence and complementarity with other relevant EU instruments**.*

***In addition** to the enhanced coordination and steering within the Council, **the Committee established by the NDICI Regulation will exercise its role in accordance with Regulation (EU) No 182/2011**. The rules of procedure of this Committee should include regular exchange of views with the Commission on the multi-annual programming of NDICI, particularly with regard to geographic and thematic pillars, the mid-term reviews and ad-hoc reviews of multi-annual indicative programmes as well as joint programming and joint implementation.”*

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Recital Line 49	(39) External actions are often implemented in a highly volatile environment requiring continuous and rapid adaptation to the evolving needs of Union partners and to global challenges to human rights, democracy and good governance, security and stability, climate change and environment, oceans, and the migration crisis and its root causes. Reconciling the principle of predictability with the need to react rapidly to new needs consequently means adapting the financial implementation of the programmes. To increase the ability of the EU to respond to unforeseen needs, building on the successful experience of the European Development Fund (EDF), an amount should be left unallocated as an emerging challenges and priorities cushion. It should be mobilised in accordance with the procedures established in this Regulation.		DELETED FROM THIS POINT UNTIL THE END OF THE COLUMN (page 13)
Recital Line 55	(45) In order to ensure uniform conditions for the implementation of the relevant provisions of this Regulation, implementing powers should be conferred on the Commission. Those powers should be		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
	exercised in accordance with Regulation (EU) No 182/2011 ¹ of the European Parliament and of the Council.		
Recital Line 56	(46) In order to supplement or amend non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the provisioning rates laid down in Article 26(3), the areas of cooperation and intervention listed in Annexes II, III and IV, the priority areas of the EFSD+ operations listed in Annex V, the governance of the EFSD+ in Annex VI, to review or complement the indicators in Annex VII where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.		
Recital Line 57	(47) Pursuant to paragraph 22 and 23 of the Inter-institutional agreement for Better Law-Making of 13 April 2016 ² , there is a need to evaluate this Programme on the basis of information collected through specific monitoring requirements, while avoiding		

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p.13)

² Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making of 13 April 2016; OJ L 123, 12.5.2016, p. 1–14.

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
	overregulation and administrative burdens, in particular on Member States. These requirements, where appropriate, can include measurable indicators, as a basis for evaluating the effects of the Programme on the ground. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.		
Article 4.6 Line 113	6. The Commission shall be empowered to adopt delegated acts in accordance with Article 34 to supplement or amend Annexes II, III and IV.	DELETED FROM THIS POINT UNTIL THE END OF THE COLUMN (page 13)	
Article 6 Line 132	3. The emerging challenges and priorities cushion of an amount of EUR 10 200 million shall increase the amounts referred to in paragraph 2 in accordance with Article 15.		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Article 7 Line 135	The association agreements, partnership and cooperation agreements, multilateral agreements, and other agreements that establish a legally binding relationship with partner countries, as well as, European Council conclusions and Council conclusions, summit declarations or conclusions of high-level meetings with partner countries, relevant European Parliament resolutions, communications of the Commission or Joint communications of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy, shall constitute the overall policy framework for the implementation of this Regulation.		
Article 8.11 Line 149	8. The Commission shall inform and have regular exchanges of views with the European Parliament.		
<i>Article 10</i> <i>New 171 bis</i>			

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Line 205	3. Multiannual indicative programmes for geographic programmes may be reviewed where necessary for effective implementation, in particular where there are substantive changes in the policy framework referred to in Article 7 or following a crisis or post-crisis situation.		
Line 206	4. Multiannual indicative programmes for thematic programmes may be reviewed where necessary for effective implementation, in particular where there are substantive changes in the policy framework referred to in Article 7.		
Article 21 Line 252	1. Action plans and measures shall be adopted by means of implementing acts adopted in accordance with the examination procedure referred to in Article 35(2).		
Article 21 Line 253	2. The procedure referred to in paragraph 1 shall not be required for:		
Article 21 Line 254	(a) action plans, individual measures and support measures, for which the Union's funding does not exceed EUR 10 million;		
Article 21 Line 255	(b) special measures as well as action plans and measures adopted in order to implement rapid response actions for which the Union's funding does not exceed EUR 20 million;		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Article 21 New line 255 bis			
Article 21 Line 256	(c) technical amendments, provided such amendments do not substantially affect the objectives of the action plan or measure concerned, such as:		
Article 21 Line 257	(i) change of method of implementation;		
Article 21 New line 257 bis			
Article 21 Line 258	(ii) reassignments of funds between actions contained in an action plan;		
Article 21 Line 259	(iii) increases or reductions of the budget of action plans and measures by not more than 20 % of the initial budget and not exceeding EUR 10 million;		
Article 21 Line 260	In case of multiannual action plans and measures, the thresholds referred to in paragraph (2)(a), (b) and (c) (iii) shall be applicable on a yearly basis.		
Article 21 Line 261	When adopted in accordance with this paragraph, action plans and measures, except exceptional assistance measures, and technical amendments shall be communicated to the European Parliament and to the Member States through the relevant committee referred to in Article 35 within one month of their adoption.		
Article 21 Line 262	3. Before the adoption or extension of exceptional assistance measures not		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
	exceeding EUR 20 million, the Commission shall inform the Council of their nature and objectives and of the financial amounts envisaged. The Commission shall inform the Council before making significant substantive changes to exceptional assistance measures already adopted. The Commission shall take account of the relevant policy approach of the Council for the planning and subsequent implementation of such measures, in the interests of consistency of the Union's external action.		
Article 21 Line 263	The Commission shall keep the European Parliament duly informed, in a timely manner, about the planning and the implementation of exceptional assistance measures pursuant to this Article, including the financial amounts envisaged, and shall also inform the European Parliament when making substantial changes or extensions to that assistance.		
Article 21 Line 264	4. In the event of duly justified imperative grounds of urgency, such as crises including natural or man-made disasters, immediate threats to democracy, the rule of law, human rights or fundamental freedoms, the Commission may adopt action plans and measures or amendments to existing action plans and measures, as immediately applicable implementing acts, in accordance with the procedure referred to in		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
	Article 35(4).		
Article 26.4 Line 342	4. The provisioning rate shall range between 9% and 50% depending on the type of operations.		
Article 27.9 Line 374	9. The Commission shall be empowered to adopt delegated acts in accordance with Article 34 to supplement or amend the priority areas in Annex V and the governance of the EFSD+ in Annex VI.		
Article 31.9 Line 423	9. To ensure effective assessment of progress of this Regulation towards the achievement of its objectives, the Commission shall be empowered to adopt delegated acts in accordance with Article 34 to amend Annex VII to review or complement the indicators where considered necessary and to supplement this Regulation with provisions on the establishment of a monitoring and evaluation framework.		
Article 34 Line 439	1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.		
Article 34 Line 440	2. The power to adopt delegated acts referred to in Article 4(6), Article 26(3), Article 27(9) and Article 31(9) shall be conferred on the Commission for the period of validity of this Regulation.		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Article 34 Line 441	3. The delegation of power referred to in Article 4(6), Article 26(3), Article 27(9) and Article 31(9) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.		
Article 34 Line 442	4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.		
Article 34 Line 443	5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.		
Article 34 Line 444	6. A delegated act adopted pursuant to Article 4(6), Article 26(3), Article 27(9) and Article 31(9) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
	that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.		
Article 34 Line 446	1. The Commission shall be assisted by the Neighbourhood, Development and International Cooperation committee. This committee shall be a committee within the meaning of Regulation (EU) No 182/2011.		
Article 34 Line 447	2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.		
Article 34 Line 448	3. Where the opinion of the committee is to be obtained by a written procedure, the procedure shall be terminated without result when, within the time limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so requests.		
Article 34 Line 449	4. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.		

	<i>Commission proposal</i>	<i>REV 2</i>	<i>REV3 ter</i>
Article 34 Line 450	5. The adopted decision shall remain in force for the duration of the adopted or modified document, action programme or measure.		
Article 34 Line 451	6. An observer from the European Investment Bank shall take part in the Committee's proceedings with regard to questions concerning the European Investment Bank.		
Article 34 New line 451. bis			
