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NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee

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Subject: REACT-EU Regulation
- Partial mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 28 May 2020, following the COVID-19 outbreak, the Commission adopted a proposal for a Regulation amending Regulation (EU) No 1303/2013 as regards exceptional additional resources and implementing arrangements under the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy, known as REACT-EU¹.

¹ Doc. 8408/20 + ADD1.

2. The overarching objective of REACT-EU is to prevent the widening of disparities and uneven recovery processes between Members States and regions, to reinforce their crisis response capacity and to help their economies and societies to prepare the foundations for a swift recovery.

II. WORK WITHIN THE COUNCIL

3. The Commission proposal for REACT-EU was presented to the Structural Measures Working Party on 4 June, followed by detailed examination on 9 and 23 June during the Croatian Presidency, and on 3 July during the German Presidency.
4. The Structural Measures Working Party discussed the Presidency compromise proposals on REACT-EU at its meetings on 9 and 16 July, under the German Presidency.
5. Since the REACT-EU Regulation is a proposal linked to the Multiannual Financial Framework 2014-2020 (MFF) and to the European Union Recovery Instrument (EURI), all provisions with budgetary implications or of a horizontal nature have been set aside (in square brackets) for the time being - and thus excluded from this partial mandate for negotiations - pending further progress on the MFF and on the EURI. These provisions concern: Article 1, point 1 (Article 91 (1a) CPR - Resources for the 2020 budget commitments); Article 1, point 2 (Article 92a CPR - Resources from the EURI, and Article 92b CPR - Exceptional additional resources); and the new Annex VIIa (allocation methodology).
6. Substantial progress has been made since the detailed examination of REACT-EU began at working party level. Following the Structural Measures Working Party on 16 July, **the Presidency is of the view that, based on the principle that "nothing is agreed until everything is agreed", a balanced compromise text has emerged and has been supported by a majority of Member States.**

III. WAY FORWARD

7. The Permanent Representatives Committee is, therefore, invited to agree on a partial mandate for negotiations with the European Parliament and to confirm the compromise proposed by the Presidency on the REACT-EU Regulation, as set out in the Annex to this note.
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REACT-EU Regulation

Article 1

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

1. in Article 91, a new paragraph 1a is inserted:

“1a. In addition to the global resources referred to in paragraph 1, additional resources of [EUR 5 000 000 000 in current prices] shall be made available for economic, social and territorial cohesion for budgetary commitment for 2020, and allocated to the ERDF and the ESF.”;

2. the following Articles 92a and 92b are inserted:

“Article 92a

Resources from the European Union Recovery Instrument

Measures referred to in Article 2 of Regulation [ERI] shall be implemented under the Structural Funds with an amount of [EUR 53 272 800 000 in current prices of the amount referred to in Article 3(2)(a)(i) of that Regulation, subject to its Article 4(3), (4) and (8).

These additional resources for 2021 and 2022 shall constitute external assigned revenues in accordance with Article 21(5) of the Financial Regulation.]

Article 92b

Exceptional additional resources and implementing arrangements for the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy (REACT-EU)

1. The additional resources referred to in Articles 91(1a) and 92a ('the additional resources') shall be made available under the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy (REACT-EU). The additional resources shall be used to implement technical assistance pursuant to paragraph 6 of this Article and the operations implementing the thematic objective in paragraph 9 of this Article.
2. [Additional resources shall be made available for budgetary commitment for the years 2020 to 2022 in addition to the global resources set out in Article 91 as follows:
 - 2020: EUR 5 000 000 000;
 - 2021: EUR 42 434 400 000;
 - 2022: EUR 10 820 400 000.]

[The additional resources for 2020 shall be made available from the additional resources as set out in Article 91(1a).

The additional resources for 2021 and 2022 shall be made available from the additional resources as set out in Article 92a. The additional resources set out in Article 92a shall also support administrative expenditure up to EUR 18 000 000 in current prices.]

3. 0.35% of the additional resources shall be allocated to technical assistance at the initiative of the Commission.

4. The Commission shall adopt a decision, by means of implementing acts, setting out the breakdown of the additional resources as appropriations from the Structural Funds for 2020 and 2021 for each Member State in accordance with the criteria and methodology set out in Annex VIIa. That decision shall be revised in 2021 to set out the breakdown of the additional resources for 2022 based on data available by 19 October 2021.
5. By way of derogation from the first subparagraph of Article 76, the budget commitments for the additional resources in respect of each operational programme concerned shall be made for each Fund for the years 2020, 2021 and 2022.

The legal commitment referred to in the second subparagraph of Article 76 for the years 2021 and 2022 shall enter into force as of the date referred to in Article 4(3) of the [ERI Regulation].

The third and fourth subparagraphs of Article 76 shall not apply in respect of the additional resources.

By way of derogation from Article 14(3) of the Financial Regulation, the de-commitment rules set out in Chapter IV of Title IX of Part II and in Article 136 shall apply to the budgetary commitments based on the additional resources referred to in Article 92a. By derogation from Article 12(4)(c) of the Financial Regulation, the additional resources shall not be used for a succeeding programme or action.

By way of derogation from Articles 86(2) and 136(1), the commitments for additional resources shall be decommitted in accordance with the rules to be followed for the closure of the programmes.

Each Member State shall allocate the additional resources available for programming under the ERDF and the ESF to operational programmes.

By way of derogation from Article 92(7), a share of the additional resources may also be proposed to be used to increase the support for the Fund for European Aid to the Most Deprived ('FEAD') before or at the same time as the allocation to the ERDF and the ESF.

Following their initial allocation, the additional resources may, at the request of a Member State for amendment of an operational programme pursuant to Article 30(1), be transferred between the ERDF and the ESF, irrespective of the percentages referred to in points (a), (b) and (c) of Article 92(1).

Article 30(5) shall not be applicable for the additional resources. These resources shall be excluded from the basis of calculation for the purposes of the ceilings established in that paragraph.

For the purposes of the application of point (f) of Article 30(1) of the Financial Regulation, the condition that appropriations are for the same objective shall not apply in respect of these transfers. Transfers can only apply to the ongoing year or to future years in the financial plan.

The requirements laid down in Article 92(4) shall not apply to the initial allocation or their subsequent transfers.

Amounts allocated to the YEI in accordance with Article 92(5) under the Investment for growth and jobs goal shall not be affected.

The additional resources shall be implemented in accordance with the rules of the Fund to which they are allocated or transferred.

6. Up to 4% of the total additional resources under the ERDF and the ESF may be allocated to technical assistance under any existing operational programme supported from the ERDF or the ESF or a new operational programme or operational programmes referred to in paragraph 10.

7. By way of derogation from Article 81(1) and Article 134(1), the initial pre-financing to be paid following the Commission decision adopting an operational programme or approving the amendment to an operational programme for the allocation of the additional resources shall be [50]% of the additional resources allocated to programmes for the year 2020 under the new thematic objective referred to in paragraph 9 of this Article.

For the purpose of applying Article 134(2) for the annual pre-financing in the years 2021, 2022 and 2023, the amount of the support from the Funds for the whole programming period to the operational programme shall include the additional resources.

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

8. The additional resources not allocated to technical assistance shall be used under the thematic objective set out in paragraph 9 to support operations fostering crisis repair in the context of the COVID-19 pandemic or preparing a green, digital and resilient recovery of the economy.

Member States may allocate the additional resources either to one or more separate priority axes within an existing operational programme or programmes or to new operational programmes referred to in paragraph 10. By way of derogation from Article 26(1), the programme shall cover the period until 31 December 2022, subject to paragraph 4 above.

For the ERDF, the additional resources shall primarily be used to support investment in products and services for health services, to provide support in the form of working capital or investment support to SMEs, investments contributing to the transition towards a digital and green economy, investments in infrastructure providing basic services to citizens, and economic measures in the regions which are most dependent on sectors most affected by the crisis.

For the ESF, the additional resources shall primarily be used to support job maintenance, including through short-time work schemes and support to self-employed, even when that support is not combined with active labour market measures, unless the latter are imposed by national law. The additional resources shall also support job creation, in particular for people in vulnerable situations, youth employment measures, education and training, skills development, in particular to support the twin green and digital transitions, and to enhance access to social services of general interest, including for children.

9. With the exception of technical assistance referred to in paragraph 6 and of the additional resources used for the FEAD referred to in the seventh subparagraph of paragraph 5, the additional resources shall support operations under the new thematic objective “Fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy”, complementing the thematic objectives set out in Article 9.

The thematic objective referred to in the first subparagraph shall exclusively be available for the programming of the additional resources. By way of derogation from points (b), (c) and (d) of Article 96(1), it shall not be combined with other investment priorities.

The thematic objective referred to in the first subparagraph shall also constitute the single investment priority for the programming and implementation of the additional resources from the ERDF and the ESF.

Where one or more separate priority axes are established corresponding to the thematic objective referred to in the first subparagraph within an existing operational programme, the elements listed in points (b)(v) and (vii) of Article 96(2) shall not be required for the description of the priority axis in the revised operational programme.

The revised financing plan set out in Article 96(2)(d) shall set out the allocation of the additional resources for the years 2020, 2021 and, where applicable, for 2022 without identifying amounts for the performance reserve and with no breakdown per category of regions.

By way of derogation from Article 30(1), requests for the amendment of a programme submitted by a Member State shall be duly justified and shall in particular set out expected impact of the changes to the programme on fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy. They shall be accompanied by the revised programme.

10. By way of derogation from Article 26(4), new dedicated operational programmes may be drawn up by Member States under the new thematic objective referred to in paragraph 9. No ex ante evaluation as set out in Article 55 shall be required.

By way of derogation from Article 96(2)(a), where such a new operational programme is established, the justification shall set out the expected impact of the operational programme on fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy.

Where such a new operational programme is established, only authorities designated under on-going operational programmes supported by the ERDF, the ESF and the Cohesion Fund may be identified by the Member States for the purposes of point (a) of Article 96(5).

The elements set out in point (b)(v) and (vii) of the first subparagraph of paragraph 2, in paragraph 4, in point (b) and (c) of paragraph 6 and in paragraph 7 of Article 96 shall not be required for such new operational programme. The elements set out in Article 96(3) shall only be required where corresponding support is provided.

- 10a. By way of derogation from Article 65(9), expenditure for operations supported under the thematic objective set out in paragraph 9 shall be eligible as of 1 February 2020.

11. By way of derogation from the first and second subparagraphs of Article 120(3), a co-financing rate of up to [100]% may be applied to the priority axis or axes supported by the additional resources programmed under the thematic objective referred to in paragraph 9 of this Article.

By way of derogation from Article 56(3) and 114(2), the Member States shall ensure that by 31 December 2024 at least one evaluation on the use of the additional resources is carried out to assess their effectiveness, efficiency, impact and how they contributed to the thematic objective referred to in paragraph 10 of this Article.

12. The following provisions shall not apply to the additional resources:
 - (a) requirements on thematic concentration including thresholds established for sustainable urban development as set out in this Regulation or the Fund-specific rules, by way of derogation from Article 18;
 - (b) ex ante conditionalities, by way of derogation from Article 19 and the Fund-specific rules;
 - (c) requirements on the performance reserve and application of the performance framework, by way of derogation from Articles 20 and 22 respectively;

[point (d) is deleted]

- (e) the derogation provided in Article 25a(7) for the selection of 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);
- (f) requirements to prepare a communication strategy, by way of derogation from Article 116 and point (a) of Article 115(1).

13. While carrying out their responsibilities linked to information, communication and visibility in accordance with Article 115(1) and (3) and with Annex XII, Member States and managing authorities shall ensure that potential beneficiaries, beneficiaries, participants, final recipients of financial instruments and the general public are aware of the existence, volume and additional support stemming from the additional resources.

The reference to the “Fund”, “Funds” or “ESI Funds” in Section 2.2 of Annex XII shall be either replaced or complemented by a reference to [REACT-EU], where financial support is provided to operations from the additional resources.”;

3. in Article 154, the following subparagraph is added:

“Article 91(1a), Article 92a and Article 92b 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.”

4. A new Annex VIIa is added.

Article 2

This Regulation shall enter into force on the 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
The President

For the Council
The President

[ANNEX]

[A new Annex VIIa is added :

“ANNEX VIIa

Methodology on the allocation of exceptional additional resources for the Investment for growth and jobs goal to provide assistance for fostering crisis repair in the context of the COVID-19 pandemic and preparing a green, digital and resilient recovery of the economy per Member State – Article 92b(4)

Allocation method for the exceptional additional resources

The exceptional additional resources shall be distributed between the Member States according to the following methodology:

1. Each Member State’s provisional share from the additional resources is determined as the weighted sum of the shares determined on the basis of the following criteria, weighted as indicated:
 - a) A factor of GDP (weighting of 2/3) obtained by applying the following steps:
 - (i) share of each Member State of the total loss of real seasonally adjusted GDP expressed in EUR between the first semester of 2019 and the end of the applicable reference period for all Member States considered;
 - (ii) adjustment of the shares so obtained by dividing them with the Member State’s GNI per capita expressed as a percentage of the average GNI per capita of the EU-27 (average expressed as 100%).
 - b) A factor of unemployment (weighting of 2/9) expressed as the weighted average of:
 - (i) the share of the Member State in the total number of unemployed (weighting of 3/4) for all Member States considered in January 2020, as well as
 - (ii) the share of the Member State in the total increase in the number of persons unemployed (weighting of 1/4) between January 2020 and the end of the applicable reference period for all Member States considered.

- c) A factor of youth unemployment (weighting of 1/9) expressed as the average of:
 - (i) the share of the Member State in the total number of young persons unemployed (weighting of 3/4) for all Member States considered in January 2020, as well as
 - (ii) the share of the Member State in the total increase in the number of young persons unemployed (weighting of 1/4) between January 2020 and the applicable reference period for all Member States considered.

In case the Member State's real seasonally adjusted GDP expressed in EUR for the applicable reference period is higher than in the first semester of 2019, that Member State's data shall be excluded from the calculations in indent (i) of point a).

In case the number of people unemployed (age group 15 to 74) or young people unemployed (age group 15 to 24) in the Member State for the applicable reference period is lower than in January 2020, that Member State's data shall be excluded from the calculations in indent (i) of point b) and indent (i) of point c).

- 2. The rules described in paragraph 1 shall not result in allocations per Member State for the whole period 2020 to 2022 higher than
 - a) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is above 109% of the EU-27 average: 0.07% of their real GDP of 2019;
 - b) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is equal to or below 90% of the EU-27 average: 2.60% of their real GDP of 2019;
 - c) for Member States whose average GNI per capita (in PPS) for the period 2015-2017 is above 90% and equal to or below 109% of the EU-27 average: the percentage is obtained through a linear interpolation between 0.07% and 2.60% of their real GDP of 2019 leading to a proportional reduction of the capping percentage in line with the increase in prosperity.

The amounts exceeding the level set out in points a) to c) per Member State are redistributed proportionally to the allocations of all other Member States whose average GNI per capita (in PPS) is under 100% of the EU-27 average. The GNI per capita (in PPS) for the period 2015-2017 is the one used for cohesion policy in the MFF 2021-2027 negotiations.

3. For the purposes of calculating the distribution of the exceptional additional resources for the years 2020 and 2021:
 - a) For GDP the reference period shall be: the first semester of 2020;
 - b) For the number of people unemployed and the number of young people unemployed the reference period shall be: the average of June to August 2020.
 - c) The maximum allocation resulting from the application of paragraph 2 is multiplied by the share of the additional resources for the years 2020 and 2021 in the total additional resources for the years 2020, 2021 and 2022.

Before the application of the method described in paragraphs 1 and 2 concerning the additional resources for the year 2020, an amount corresponding to an aid intensity of EUR 30 per inhabitant will be allocated to the outermost NUTS level 2 regions from the allocation. That allocation will be distributed per region and Member State in a manner proportional to the total population of those regions. The remaining amount for the year 2020 will be distributed among Member States in accordance with the method described in paragraphs 1 and 2.

4. For the purposes of calculating the distribution of the exceptional additional resources for the year 2022:
 - a) For GDP the reference period shall be: the first semester of 2021;
 - b) For the number of people unemployed and the number of young people unemployed the reference period shall be: the average of June to August 2021.
 - c) The maximum allocation resulting from the application of paragraph 2 is multiplied by the share of the additional resources for the year 2022 in the total additional resources for the years 2020, 2021 and 2022.”.]
