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From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	COM(2020) 447 final
Subject:	ESF Plus Regulation (amended proposal) - Partial mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 30 May 2018, the Commission tabled the proposal for the European Social Fund Plus Regulation (ESF+ Regulation)¹, which is part of the Cohesion Policy legislative package for 2021-2027. The overarching policy objective of the ESF+ Regulation is to help create a more performing and resilient ‘Social Europe’ and implement the European Pillar of Social Rights as well as the social and employment priorities endorsed by the European economic governance process.
2. The ESF+ Regulation was presented to the Structural Measures Working Party in June 2018 during the Bulgarian Presidency. The detailed examination of the ESF+ Regulation took place under the Austrian and the Romanian Presidencies.

¹ Doc. 9573/18 + ADD1-2.

3. The Permanent Representatives Committee endorsed a (partial) mandate for negotiations with the European Parliament on the ESF+ Regulation on 3 April 2019².
4. On 28 May 2020, following the COVID-19 outbreak, and as part of the revised MFF 2021-27 and of the Recovery Package, the Commission proposed various amendments to the Cohesion policy legislative package 2021-2027, including to the ESF+ Regulation³.

II. WORK WITHIN THE COUNCIL

5. The amended Commission proposal for the ESF+ Regulation was presented to the Structural Measures Working Party on 4 June, during the Croatian Presidency, followed by detailed examination on 15 June.
6. The Structural Measures Working Party discussed the Presidency compromise proposals on the amended ESF+ Regulation at its meetings on 3, 9 and 16 July, under the German Presidency.
7. Since the amended ESF+ Regulation proposal is linked to the Multiannual Financial Framework (MFF), 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. These provisions concern Article 5 (Budget) and Article 7 (Thematic concentration).
8. Substantial progress has been made since the detailed examination of the amended ESF+ Regulation proposal 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.**

² Doc. 8211/19.

³ Doc. 8394/20.

III. WAY FORWARD

9. 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 amended ESF+ Regulation, as set out in the Annex to this note.
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EUROPEAN SOCIAL FUND PLUS REGULATION

Commission proposal COM(2018) 382 is amended as follows:

(1) The legal basis is amended as follows:

“Having regard to the Treaty on the Functioning of the European Union, and in particular Article 46(d), Article 149, Article 153(2)(a), Article 164, Article 175(3) and Article 349 thereof,”;

(15) Article 2(1) is amended as follows:

(a) point 2 is replaced by the following:

“(2) ‘associated country’ means a third country which is party to an agreement with the Union allowing for its participation in the Employment and Social Innovation strand of the ESF+ in accordance with Article 30;” ;

(b) point 9 is deleted;

(c) point 10 is replaced by the following:

“(10) ‘legal entity’ means any natural or legal person created and recognised as such under national law, Union law or international law, which has legal personality and which may, acting in its own name, exercise rights and be subject to obligations, or an entity without a legal personality in accordance with Article 197(2)(c) of the Financial Regulation;”;

(16) Article 3 is amended as follows:

(a) the second subparagraph is replaced by the following:

“The ESF+ shall support, complement and add value to the policies of the Member States to ensure equal opportunities, access to the labour market, fair and quality working conditions, social protection and inclusion.” ;

(b) in the third subparagraph, point (b) is replaced by the following:

“(b) under direct and indirect management for the part of the assistance which corresponds to the objectives indicated in Articles 4(1) and 23 (the ‘Employment and Social Innovation strand’).”;

(17) Article 4 is amended as follows:

(a) in paragraph 1, the introductory sentence is replaced by the following:

“1. The ESF+ shall support the following specific objectives in the policy areas of employment and labour mobility, education and social inclusion, including contributing to poverty eradication, and thereby also contributing to the policy objective for “A more social and inclusive Europe – Implementing the European Pillar of Social Rights” set out in Article [4] of the [CPR]”;

(b) paragraph 3 is deleted;

(c) the following paragraph 3 is added:

3. In addition, where strictly necessary as a temporary measure to respond to exceptional or unusual circumstances referred to in Article 15a of [Common Provisions Regulation], the ESF+ supports:

- (i) the financing of short-time work schemes without the requirement that they should be combined with active measures;
- (ii) access to healthcare including for people not in immediate socio-economic vulnerability.

Where, upon a request submitted by the Member States concerned, the Commission finds that the requirements laid down in the first subparagraph are fulfilled, it shall adopt an implementing decision specifying the period during which the temporary additional support from ESF+ is authorised.⁴

The Commission shall monitor the implementation of this paragraph and assess whether the temporary additional support from ESF+ is sufficient to facilitate the use of the fund in response to the exceptional and unusual circumstances. On the basis of its assessment, the Commission shall, where deemed appropriate, make proposals for amendments to this Regulation, including on thematic concentration requirements in Article 7.

⁴ *Recital (54) is modified as follows:*

“(54) In order to allow for a rapid response to exceptional and unusual circumstances as referred to in the Stability and Growth Pact that may arise during the programming period, implementing powers should be conferred to the Commission to adopt temporary measures to facilitate the use of the support from the ESF+ in response to such circumstances. The Commission should adopt the measures that are most appropriate in light of the exceptional or unusual circumstances that a Member State is facing while preserving the objectives of the fund. Furthermore, the implementing powers in relation to the temporary measures for the use of the Funds in response to exceptional and unusual circumstances should be adopted without committee procedures given that the scope of application is determined by the Stability and Growth Pact and limited to the measures set out in this Regulation. The Commission should also monitor the implementation and assess the appropriateness of the measures.”;

(18) Article 5 is amended as follows:

(a) paragraphs 1 to 3 are replaced by the following:

“1. The total financial envelope for the ESF+ for the period 2021-2027 shall be [EUR 97 332 282 000 in current prices].

2. The part of the financial envelope for the ESF+ strand under shared management under the Investment for Jobs and Growth goal [shall be EUR 96 571 282 000 in current prices of which EUR 200 000 000 in current prices shall be allocated for transnational cooperation supporting innovative solutions as referred to in Article 23(i) and EUR 400 000 000 in current prices as additional funding to the outermost regions identified in Article 349 TFEU and the NUTS level 2 regions fulfilling the criteria laid down in Article 2 of Protocol No 6 to the 1994 Act of Accession].

3. The financial envelope for the Employment and Social Innovation strand for the period 2021-2027 shall be [EUR 761 000 000 in current prices.”;]

(b) paragraph 4 is deleted;

(c) paragraph 5 is amended as follows:

“5. The amount referred to in paragraph 3 may also be used for technical and administrative assistance for the implementation of the programme, such as preparatory, monitoring, control, audit and evaluation activities including corporate information technology systems.”;

(19) in Article 6, paragraph 1 is replaced by the following:

“1. All programmes implemented under the ESF+ strand under shared management, as well as the operations supported by the Employment and Social Innovation strand shall ensure gender equality throughout their preparation, implementation, monitoring and evaluation. They shall also ensure equal opportunities for all, without discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation throughout their preparation, implementation, monitoring and evaluation. These programmes and operations shall also aim at increasing participation of women in employment, combating the feminisation of poverty and gender discrimination in the labour market and in education and training.”;

(20) Article 7 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

“Member States and, where appropriate the Commission, shall foster synergies and ensure coordination, complementarity and coherence between the ESF+ and other Union funds, programmes and instruments, both in the planning phase and during implementation. Member States and, where appropriate the Commission, shall optimise mechanisms for coordination to avoid duplication of effort and ensure close cooperation between those responsible for implementation to deliver coherent and streamlined support actions.”;

(b) the following paragraph 3a is inserted:

“3a. Member States shall allocate at least [5]% of their ESF+ resources under shared management to support targeted actions and structural reforms to tackling child poverty under the specific objectives set out in points (v) and (vii) to (x) of Article 4(1).”;

(c) paragraph 5 is replaced by the following:

“5. Member States having a rate of young people aged 15 to 29 not in employment, education or training above the Union average on the basis of the latest annual available Eurostat data, shall allocate at least [15]% of their ESF+ resources under shared management for the years 2021 to 2025 to targeted actions and structural reforms to support youth employment, vocational education and training, in particular apprenticeships, and school-to-work transition, pathways to reintegrate into education or training and second chance education, in particular in the context of implementing Youth Guarantee schemes.

At mid-term in accordance with Article [14] of [the future CPR], Member States having a rate of young people aged 15 to 29 not in employment, education or training above the Union average on the basis of the latest available annual Eurostat data, shall allocate at least [15]% of their ESF+ resources under shared management for the years 2026 to 2027 to those actions.

Outermost regions meeting the conditions set out in the first and second subparagraphs shall allocate at least [15]% of the ESF+ resources under shared management in their programmes to the targeted actions set out in the first subparagraph. This allocation shall be taken into account for verifying compliance with the minimum percentage at national level set out in the first and second subparagraphs.

When implementing such actions, Member States shall give priority to inactive and long-term unemployed young people and put in place targeted outreach measures.”;

- (21) in Part III – Implementation under direct and indirect management, the title “Chapter I - Specific rules for the Employment and Social Innovation strand” is deleted;
- (22) the title “Section I: General Provisions” is replaced by “Chapter I - Operational objectives”;
- (23) the title “Section II: Eligibility” is replaced by “Chapter II - Eligibility”;
- (24) Chapter II and its Articles 26 to 29 are deleted;
- (25) the title “Chapter III - Common Rules applicable to the Employment and Social Innovation and Health Strands” is deleted;
- (26) Article 30 is amended as follows:
- (a) the title of Article 30 is replaced by the following:
“Participation of third countries”;
 - (b) in paragraph 1, the introductory sentence is replaced by the following:
“The Employment and Social Innovation strand shall be open to the following associated countries.”;
 - (c) paragraph 2 is deleted;
- (27) the title “Chapter III - General Provisions” is inserted before Article 31;
- (28) Article 31 is amended as follows:
- (a) paragraph 1 is replaced by the following:
“1. The Employment and Social Innovation strand may provide funding in any of the forms laid down in the Financial Regulation, in particular grants, prizes, procurement and voluntary payments to International Organisations of which the Union is a member or in whose work it participates.”;
 - (b) in paragraph 2, the first subparagraph is replaced by the following:
“2. The Employment and Social Innovation strand shall be implemented directly as provided for by the Financial Regulation or indirectly with bodies referred to in Article [62(1)(c)] of the Financial Regulation.”;
 - (c) paragraphs 4 and 5 are deleted;

(29) Article 32 is replaced by the following:

“Article 32

Work programme and coordination

The Employment and Social Innovation strand shall be implemented by work programmes referred to in Article [110] of Financial Regulation. Work programmes shall set out, where applicable, the overall amount reserved for blending operations.”

The Commission shall adopt implementing acts laying down annual or multi-annual work programmes and their possible changes covering the Employment and Social Innovation strand. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 39a.

The Commission shall foster synergies and ensure effective coordination between ESF+ and other relevant EU instruments as well as among the ESF+ strands;

(30) Article 33 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Indicators to monitor implementation and progress of the strand towards the achievement of the specific objectives set out in Article 4 and the operational objectives set out in Article 23 shall be set.”;

(b) paragraph 3 is deleted;

(31) in Article 37, paragraph 2 is replaced by the following:

“2. The Commission shall implement information and communication actions relating to the Employment and Social Innovation strand, and their actions and results. Financial resources allocated to the Employment and Social Innovation strand shall also contribute to the corporate communication of the political priorities of the Union, as far as they are related to the objectives referred to in Articles 4 and 23.”;

[Point (32) is deleted]

(33) Article 38 is deleted.

(33a) Article 39a (new) is replaced by the following:

Article 39a (new)

Committee procedure for the Employment and Social Innovation strand

1. The Commission shall be assisted by a committee for the Employment and Social Innovation strand. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

(34) Article 42 is amended as follows:

(a) the title is replaced by the following:

“Transitional provisions for the Employment and Social Innovation strand”;

(b) paragraphs 1 and 2 are replaced by the following:

“1. Regulation (EU) No 1296/2013 of the European Parliament and of the Council⁵ is repealed with effect from 1 January 2021.

2. The financial envelope for the Employment and Social Innovation strand may also cover technical and administrative assistance expenses necessary to ensure the transition between the ESF+ and the measures adopted under its predecessor: the Employment and Social Innovation programme.”;

(35) Annex III is deleted.

⁵ Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).