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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party of Financial Counsellors
Subject:	JTM Public Sector Loan Facility - EIB Group technical comments

Delegations will find attached the EIB Group technical comments to the JTM 3rd pillar - Public Sector Loan Facility.

Proposal for a Regulation on the public sector loan facility under the Just Transition Mechanism

EIB technical comments

- EIB had a very constructive dialogue with the Commission in the preparatory phase;
- The Commission's proposal reflects the spirit of our joint understanding that was communicated in January;
- EIB stands ready to work together with the EC and to provide up to EUR 10bn of lending for projects in the public sector,
- EIB has a few technical concerns that should be addressed in view of ensuring full implementability of the facility and a limited number of technical suggestions, as outlined in the Annex.

1. Objectives.

Issue:

Art.3 (objectives): "facilitating the financing of projects that (...) **would not be financed without the element of grant support** from the Union budget." [repeated also in art. 8 on eligibility]

Concern:

- It would not be possible to demonstrate such an effect under this facility.
- The size of the EU grant under Pillar 3 (15-20% of the EIB loan, which translates to 5-10% of project costs) is limited and as such could not be considered to be a critical aspect in the investment decision by promoters. Such percentage can be below the typical level of uncertainty on capex of many investment projects.
- Furthermore, in the absence of EU grants, a promoter might still be in a position to implement the project thanks to budgetary transfers from local/national authorities.

Proposed Solution:

- **We suggest to delete this requirement.**
- Alternatively, we propose to clarify that the **grant facilitates the project implementation** (e.g. by accelerating the investment decision, by reducing the impact on tariffs or impact on fiscal space, etc...), but we suggest not to use such an absolute language that the projects "would not be financed" without the grant.

2. Complementarity with other EU programmes, including other pillars of the JTM.

Issue:

Art.8 (eligible projects): "(b) **the projects do not receive support under any other Union programmes**".

Concern:

- We believe that complementarity with other union programmes, and in particular other pillars of JTM should be enabled and encouraged.

- The current language is too restrictive for several reasons. As already explained, the EU grant would be limited to circa 5-10% of costs for Pillar 3 projects; whereas it would be 55%/70% (depending on the final decision of the co-legislators) for projects under Pillar 1 in transition/less-developed regions.
- In practice, it might be necessary to have flexibility for Pillar 3 projects to benefit from a more flexible grant contribution level by mobilising if necessary additional EU grants (notably ESIF) on top of Pillar 3 funding.
- A significant number of investments projects in cohesion countries benefit from ESIF funds with more attractive EU grant rates. With the above condition, there is a risk that the Pillar 3 facility is crowded out.
- For example, some projects might benefit from previous technical assistance/advisory support funded by the EU not only under the very modest JTM envelope for advisory. Under current proposal, they would already be excluded from benefitting from this Facility.

Proposed solution:

- Therefore, we propose to **remove this eligibility condition to allow for synergies among various EU programmes, obviously fully respecting all EU rules, e.g. with regard to cumulation and double financing.**
- Alternatively/in addition, a maximum ceiling could also be considered.

3. Finance partners rules, policies and procedures

- The third concern is rather a request for a clarification to be made, a very important one from financial partners perspective.
- While we understand and agree with that *the Regulation lays down rules for the grant component of Union support provided under this Facility* (cf. Article 1 *Subject matter and scope*), the Regulation should acknowledge that **the loans granted by EIB** are approved by its governing bodies and as such **are provided in line with its rules, policies and procedures.** This is to reflect the independence and autonomy of EIB's governing bodies and is without prejudice to the EC's decision-making competence in relation to the grant component.
- In this vein, the scope of the Regulation should be consistently stated as covering only the grant component which is to be combined with loans from financing partners to remove any scope for interpreting that the loans are also governed or funded by the Regulation. In particular, to avoid creating doubt, we would suggest to delete references to loans provided by finance partners "under this Facility" (e.g. Art 10(2)).

We are convinced that all these issues can be easily addressed in the process of negotiation on the Regulation.

We are very happy to work with the Commission on this Facility and we stand ready to advise on any technical elements and respond to any technical questions.

Annex: Full list of amendments proposals

Part 1: Three priority technical concerns

Article 3.2 The Facility shall have the specific objective of increasing public sector investments, which address the development needs of regions identified in the territorial just transition plans, by facilitating the financing of projects that do not generate a sufficient stream of own revenues <u>and would not be financed without the element of grant support from the Union budget.</u> Art 8 (d) (d) the projects do not generate a sufficient stream of own revenues <u>allowing them to be financed without Union support.</u> <i>Such clarification could also be considered for recital 22.</i>	To delete the underlined part	It would not be possible to demonstrate such an effect under this facility. The size of the EU grant under Pillar 3 (15-20% of the EIB loan, which translates to 5-10% of project costs) is limited and as such could not be considered to be a critical aspect in the investment decision by promoters. Such percentage can be below the typical level of uncertainty on capex of many investment projects. Furthermore, in the absence of EU grants, a promoter might still be in a position to implement the project thanks to budgetary transfers from local/national authorities.
Art.7 An administrative agreement shall be signed between the Commission and the finance partner prior to the implementation of the Facility with that finance partner. The agreement shall set out the respective rights and obligations of each party to the agreement, including on audit and communication arrangements. <i>Such clarification could also be considered for Recital 7.</i>	An administrative agreement shall be signed between the Commission and the finance partner prior to the implementation of the Facility with that finance partner. The agreement shall set out the respective rights and obligations of each party to the agreement, including on audit and communication arrangements. <u>Finance partners will provide their financing in line with their rules, policies and procedures.</u>	Important clarification that for loan part, finance partners rules, policies and procedures shall apply. The scope of the Regulation should be consistently stated as covering only the grant component which is to be combined with loans from financing partners to remove any scope for interpreting that the loans are also governed or funded by the Regulation

Art.8 (b) the projects do not receive support under any other Union programmes	To delete point (b)	This is too restrictive for several reasons. As already explained, the EU grant would be limited to circa 5-10% of costs for Pilar 3 projects; whereas it would be according to the EC proposal 55%/70% for projects under Pilar 1 in transition/less-developed regions. In practice, it might be necessary to have flexibility for Pilar 3 projects to benefit from a more flexible grant contribution level by mobilising if necessary additional EU grants (notably ESIF) on top of Pilar 3 EIB/EU funding. A significant number of investments projects in cohesion countries benefit from ESIF funds with more attractive grant rates. With the above condition, there is a risk that the Pilar 3 facility becomes a 'last resort' solution. For example, some projects might benefit from technical assistance / advisory support funded by the EU not only under the JTM envelope for advisory.
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Part 2: Other technical recommendations/proposals for clarifications

Place in the Regulation	Proposed amendment	Justification
Recital 5 [...]The investments supported may cover energy and transport infrastructure, district heating networks, green mobility, smart waste management, clean energy and energy efficiency measures including renovations and conversions of buildings, support to transition to a circular economy, land restoration and decontamination,	[...]The investments supported may cover energy and transport infrastructure, district heating networks, green mobility, smart waste management, clean energy and energy efficiency measures including renovations and conversions of buildings, support to transition to a circular economy, land restoration and decontamination,	To make the most efficient benefit of the facility and ensure clarity about the eligibility, the indicative list of public sectors could be broadened to refer also explicitly to urban renewal/regeneration, environmental infrastructure (water & sanitation), urban renewal and regeneration, cultural and historical heritage.

as well as up- and re-skilling, training and social infrastructure, including social housing. Infrastructure developments may also include solutions leading to their enhanced resilience to withstand disasters. [...]	<u>urban renewal/regeneration, environmental infrastructure (water & sanitation), urban renewal and regeneration, cultural and historical heritage</u> as well as up- and re-skilling, training and social infrastructure, including social housing. Infrastructure developments may also include solutions leading to their enhanced resilience to withstand disasters.	This would also align the recital with the key performance indicators in Annex II where “urban infrastructure” is explicitly mentioned.
Rec. 7 The Facility should provide support in the form of grants provided by the Union combined with loans provided by a finance partner.	The Facility should provide support in the form of grants provided by the Union <u>to be</u> combined with loans provided by a finance partner.	Clarification.
Recital 14 [...]Those eligibility conditions and award criteria should take into account the relevance of the project in the context of the development needs described in the territorial just transition plans, the overall objective of promoting regional and territorial convergence and the significance of the grant component for the viability of the project.[...]	[...]Those eligibility conditions and award criteria should take into account the relevance of the project in the context of the development needs described in the territorial just transition plans, the overall objective of promoting regional and territorial convergence and the <u>significance role</u> of the grant component for the viability of the project.[...]	The use of ‘significance’ should be changed to ‘role of’ (or similar) to avoid other issues relating to possible ranking of such significance.
Art 2(6) 'loan scheme' means a loan granted to a beneficiary by finance partners aimed at financing a set of several pre-identifiable projects under the Facility	Proposed alternative definition: “Loan scheme” means a loan granted <u>by a finance partner to an intermediate body, the proceeds of which are to be subsequently made available by the intermediate body to projects responding to a set of pre-defined criteria.</u>	Wording suggestion to clarify that intermediated or cascaded (whereby an FI intermediates or another body for example a region or local authority intermediates, and in that case the region/LA may also be only final beneficiary or one of them) structures are permitted based on a pre-defined set of criteria.
Article 4(1)		Wording suggestion for clarity.

Without prejudice to additional resources allocated in the Union budget for the period 2021-2027, the grant component of support provided under this Facility shall be financed from: [...]	Without prejudice to additional resources allocated in the Union budget for the period 2021-2027, the grant component <u>and the advisory of</u> support provided under this Facility shall be financed from: [...]	
Article 5 1. Union support provided under the Facility shall be provided in the form of grants in accordance with Title VIII of the Financial Regulation. 2. Union support provided under the Facility shall be implemented in direct management in accordance with the Financial Regulation. 3. The Commission may delegate powers to implement tasks of the Union support provided under the Facility to executive agencies in accordance with Article 69 of the Financial Regulation with a view to the optimum management and efficiency of the Facility.	1. Union support provided under the Facility shall be provided in the form of grants in accordance with Title VIII of the Financial Regulation <u>with the exception of advisory support, which shall be provided in accordance with Article 12.</u> 2. Union support provided under the Facility shall be implemented in direct management in accordance with the Financial Regulation. 3. The Commission may delegate powers to implement tasks of the Union support provided under the Facility in the form of grants to executive agencies in accordance with Article 69 of the Financial Regulation with a view to the optimum management and efficiency of the Facility.	Wording suggestions to clarify the different implementation modes.
Article 6(1) The resources referred to in Article 4(1), after deduction of a provision for technical and administrative expenditure referred to in Article 4(5), shall be used to finance projects, in accordance with paragraphs 2 and 3.	The resources referred to in Article 4(1), after deduction of <u>the resources referred to in Article 4(6)</u> and a provision for technical and administrative expenditure referred to in Article 4(5), shall be used to finance projects, in accordance with paragraphs 2 and 3.	Required in order to clarify the situation of the advisory support, namely that any advisory support provided through the InvestEU Hub will not be taken into account when calculating the amount of the loan / grant for the specific project.
Art. 3(3) 3. In pursuing the achievement of the specific objective referred to in paragraph 2, this Regulation also aims at providing advisory support for the preparation, development, and	3. In pursuing the achievement of the specific objective referred to in paragraph 2, this Regulation also aims at providing advisory support for the preparation, development, and	The provision of advisory support should not be tied to the definition of eligible projects (Art 3.3) – since it may not be possible to determine eligibility at the upstream point at which the

implementation of eligible projects where necessary. That advisory support shall be provided in accordance with the rules and implementation methods for the InvestEU Advisory Hub established by Article [20] of Regulation [InvestEU Regulation]. Rec. 17 In order to ensure an effective implementation of the Facility, it may be necessary to provide advisory support for the preparation, development, and implementation of projects. This support should be provided through the InvestEU Advisory Hub.	implementation of <u>eligible</u> projects where necessary. That advisory support shall be provided <u>by the relevant finance partner</u> in accordance with the rules and implementation methods for the InvestEU Advisory Hub established by Article [20] of Regulation [InvestEU Regulation]. In order to ensure an effective implementation of the Facility, it may be necessary to provide advisory support for the preparation, development, and implementation of projects. This support should be provided through the InvestEU Advisory Hub <u>through the relevant finance partner</u>.	advisory support is provided. This may also prevent the provision of advisory support to any project which had received any other form of EU support. It should also be ensured that that the provision of advisory support upstream (being EU support) in no way inadvertently prevents the provision of the pillar 3 grant support downstream. The explicit reference to the advisory support being provided by the relevant finance partner justified (as below) by the advisory support envelope being relatively small and hence it not being appropriate to subject it to the split foreseen between EIB and other advisory partners under the InvestEU Advisory Hub.
Art 4(6) Resources up to an amount of EUR 25 000 000 included in those referred to in paragraph 1, shall be provided for activities set out in Article 3(3).	Resources up to an amount of EUR 25 000 000 included in those referred to in paragraph 1, shall be provided for activities set out in Article 3(3). This amount shall not be subject to national pre-allocations and should be fully channelled via the EIB under the InvestEU Advisory Hub.	Advisory support envelope is relatively small and shall not be subject to additional restrictions nor subject to the split of the advisory resources budget under InvestEU between EIB and other potential advisory partners (since EIB is the sole implementing partner of Pillar 3).
Article 8 Only projects contributing to the objectives referred to in Article 3 and fulfilling all the conditions set out below shall be eligible for Union support under the Facility:	Only projects contributing to the objectives referred to in Article 3 and fulfilling all the conditions set out below shall be eligible for Union support <u>in the form of grants</u> under the Facility:	Required in order to clarify the separate implementation of advisory support under the InvestEU Hub.
Article 8 (a) the projects achieve measurable impact in addressing serious social, economic or environmental challenges deriving from the	the projects achieve <u>measurable</u> impact in addressing serious social, economic or environmental challenges deriving from the	While activity and output indicators can be collected for projects, a quantification of the impact/effect will not be feasible for many

transition process towards a climate-neutral economy and benefit territories identified in a territorial just transition plan, even if they are not located in those territories;	transition process towards a climate-neutral economy and benefit territories identified in a territorial just transition plan, even if they are not located in those territories;:	projects due to size and/or sectoral nature. It would be expected that the grant applicant would estimate impact in a way (quantitative or qualitative) appropriate/proportionate to the project size and nature.
Article 9 Notwithstanding the criteria set out in Article 197 of the Financial Regulation, only public sector legal entities established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission, are eligible to apply as potential beneficiaries under this Regulation.	Notwithstanding the criteria set out in Article 197 of the Financial Regulation, only public sector legal entities established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission, are eligible to apply as potential beneficiaries <u>for support in the form of grants</u> under this Regulation.	Suggested with a view to clarifying the separate implementation of advisory support through the InvestEU Hub. This is also required because, particularly in the case of intermediated lending, the grant beneficiary and the beneficiary of advisory support may not be the same entity
Art 11(2) 2. When Union support is combined with loan schemes and when supply, works or services contracts are not envisaged, paragraph 1 shall not apply.	2. When Union support is combined with loan schemes and when supply, works or services contracts are not envisaged, paragraph 1 shall not apply.	It is not clear whether current text refers to loan schemes (where there is not supply, works or services) or also other Projects. Part proposed to be deleted to avoid confusion
Art 14(2) The performance reporting system shall ensure that data regarding the indicators referred to in paragraph 1 are collected efficiently, effectively and in a timely fashion. Beneficiaries in cooperation with finance partners shall provide to the Commission the data regarding those indicators.	The performance reporting system shall ensure that data regarding the indicators referred to in paragraph 1 are collected efficiently, effectively and in a timely fashion. Beneficiaries in cooperation with finance partners shall provide to the Commission the data regarding those indicators.	Reporting on grants cannot be done in cooperation with finance partners.
Art. 16 (2) The finance partners shall provide to the Commission and any designated auditors all available documents that are necessary for both these authorities to carry out their obligations.	The finance partners shall provide to the Commission and any designated auditors all available documents that are necessary for both these authorities to carry out their obligations	The EC proposal does not take into account the existence of the Tripartite Agreement between ECA, EC and EIB which is Treaty-based and which governs the access and documentary rights of ECA vis a vis the EIB

Rec. 19 [...] In accordance with the Financial Regulation, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, and the European Court of Auditors (ECA), and ensure that any third parties involved in the implementation of Union funds grant equivalent rights.	<u>subject to the provisions of any specific audit or verification agreements concluded between the Finance Partner and the relevant EU institution</u> [...] In accordance with the Financial Regulation <u>and subject to the provisions of any relevant agreements concluded between the finance partner and the relevant EU institution</u>, any person or entity receiving Union funds is to fully cooperate in the protection of the financial interests of the Union, grant the necessary rights and access to the Commission, OLAF, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, and the European Court of Auditors (ECA), and ensure that any third parties involved in the implementation of Union funds grant equivalent rights..	
Art. 18 (1) 1. The beneficiaries and the finance partners shall ensure the visibility of the Union support provided under the Facility, in particular when promoting the projects and their results, by providing targeted information to multiple audiences, including the media and the public.	1. The beneficiaries and the finance partners shall ensure, <u>on best effort basis and in line with their rules, policies and procedures</u>, the visibility of the Union support provided under the Facility, in particular when promoting the projects and their results, by providing targeted information to multiple audiences, including the media and the public.	Alternatively, this point could be deleted and left for the detailed arrangements to be agreed in the Administrative Agreement.
Annex II: Key Performance Indicators 2. Volume of loans signed 2.1 Individual loans	2. Volume of loans signed 2.1 Individual loans	Volume of loans shall be removed from KPIs, as EIB loans are market-driven

2.2 Loan schemes [...] 7. Greenhouse gas emission reduced	<u>2.2 Loan schemes</u> 7. Greenhouse gas emission reduced, <u>where relevant and feasible for calculation</u> <u>8. Population of regions/territories benefitting from projects carried out under the Facility</u>	It is not feasible nor policy for the Bank to do the GHG calculation in every project nor at approval of the 'loan scheme'. For explanation, GHG is subject to the EIB Carbon Footprint methodology (public document): The quantification of the carbon footprint for multi-investment intermediated projects (e.g. Multi-beneficiary intermediated loans, Framework Loans, Global Loans, Equity and Debt Funds) poses challenges. Information on the large number of sub-projects financed under these operations is highly limited, which does not permit a reasonable assessment of the GHG emissions from the sub-projects, especially smaller ones and those targeting SMEs. Intermediated lending through these types of vehicles is not currently included in the carbon footprint, except for large allocations of Framework Loans that are subject to individual appraisal and submission to the Board. These should be treated as Investment Loans and included in the footprint if emissions are above the thresholds, in the year the allocation is approved by the Bank.
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