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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 15.2.2019
supplementing Regulation (EU) No 1303/2013 of the European Parliament
and of the Council with regard to the form of financing which is not linked to
costs of the relevant operations

Delegations will find attached document C(2019) 1090 final.

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Brussels, 15.2.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 15.2.2019

supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the form of financing which is not linked to costs of the relevant operations

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018¹ amends Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006².

As a result of this amendment, there is a new empowerment for the Commission to adopt a delegated act with regard to the form of financing referred to in point (e) of the first subparagraph of Article 67(1) of Regulation (EU) No 1303/2013, specifying detailed modalities concerning the financing conditions and their application. The second subparagraph of Article 131(1) states that the delegated act shall also set out elements with regard to the amounts to be included in the payment applications for this form of financing.

The newly inserted third subparagraph of Article 67(1) of Regulation (EU) No 1303/2013 clarifies that in the case of this form of financing, *"the audit shall exclusively aim at verifying that the conditions for reimbursement have been fulfilled"*. This means that, in order to comply with this regulatory provision, supporting documents of the underlying expenditure incurred by the beneficiary and paid in implementing the operation subject to the reimbursement based on financing conditions shall under no circumstances be subject to audit.

Instead, audits are to concentrate on verifying that the beneficiary has achieved the financing conditions, verifying that the managing authority has procedures to monitor and verify the fulfilment of the financing conditions as reported to it by the beneficiary, that the system to monitor and measure progress towards the fulfilment of those conditions functions effectively, and that – on the basis of sample checks – the data produced by the beneficiary is complete, accurate and true.

Similarly, the amended provisions concerning management verifications set out in point (ii) of Article 125(4)(a) clarify that, for this form of financing, the managing authority shall verify that the co-financed products and services have been delivered (which in this case means the achievement of the agreed financing conditions), that the operation complies with applicable law (see below), the operational programme and the conditions for support of the operation and specifically that *"the conditions of reimbursement of expenditure to the beneficiary have been met"*. This means again that verifying supporting documents of the underlying expenditure incurred by the beneficiary and paid in implementing the operation subject to the reimbursement based on financing conditions would not be in line with this provision.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

² OJ L 347, 20.12.2013, p. 320.

Instead, verifications should ensure that the beneficiary has achieved the financing conditions reported to the managing authority, that the system to monitor and measure progress towards the fulfilment of those conditions functions effectively, that the beneficiary has adequate procedures in place to ensure compliance with applicable law (without a need to verify this at the level of individual investments), and that – on the basis of sample checks – the data produced by the beneficiary is complete accurate and true. As for other cases, if any of these elements were already verified by an external body, the results may be taken into consideration by the managing authority for the purpose of management verifications, provided that their scope is at least the same as the scope of the verifications that would be carried out by the managing authority.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Consultation of experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making³, in accordance with Article 149(3a) of Regulation (EU) No 1303/2013, has been carried out on 22 November 2018.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The first subparagraph of Article 67(1) of Regulation (EU) No 1303/2013 was amended to introduce in its point (e) a new form of grant and repayable assistance. Article 67(5a) of Regulation (EU) No 1303/2013 was introduced to empower the Commission to adopt a delegated act supplementing that Regulation with regard to, amongst others, that form of support, by specifying detailed modalities concerning the financing conditions and their application.

On the basis of the above amendments, this Delegated Regulation lays down detailed provisions for modalities concerning the financing conditions and their application that may be used for reimbursement of expenditure by the managing authority to beneficiaries.

Article 1 therefore defines the areas of expenditure where this form of financing is introduced. Given the significant experience of support for energy efficiency measures and energy from renewable sources from the European Regional Development Fund ('ERDF') and the Cohesion Fund, as well as taking account of the average time needed for the implementation of such investments, this possibility is limited to these two areas only.

Article 2 sets out the definitions for the purposes of this new form of financing, in particular the definition of financing conditions and operations subject to this form of financing.

Article 3 cross-refers to the Annex to this Regulation with regard to the necessary detailed modalities for the definition of the final financing condition and for their application.

Article 4 sets out the elements to be included in payment applications.

The Annex sets out the detailed modalities for defining the final financing condition, a methodology to establish a justifiable amount corresponding to the final financing condition,

³ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

as well as the elements necessary to be ensured by Member States for the application of this form of financing in operations supported by the ERDF and the Cohesion Fund.

COMMISSION DELEGATED REGULATION (EU) .../...

of 15.2.2019

supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council with regard to the form of financing which is not linked to costs of the relevant operations

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 1303/2013 of 17 December 2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006⁴, and in particular Article 67(5a) thereof,

Whereas:

- (1) Point (e) of the first subparagraph of Article 67(1) of Regulation (EU) No 1303/2013 was inserted by Regulation (EU, Euratom) 2018/1046⁵ and introduced a form of financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions ('financing conditions') related to the realisation of progress in implementation or the achievement of objectives of the programmes.
- (2) Taking into account the current stage of the programming period 2014-2020, different thematic areas in which this form of financing could be effectively used and could demonstrate its benefits in terms of simplification and reduction of administrative burden for beneficiaries and managing authorities while not triggering significant changes to existing programmes were examined. Energy efficiency measures and energy from renewable sources have been extensively supported from the European Regional Development Fund ('ERDF') and the Cohesion Fund in the 2014-2020 and preceding budgetary periods. Those measures constitute an area of support including relatively homogeneous types of interventions (such as insulation measures, change of heating system or electronic appliances with enhanced efficiency), where beneficiaries or the final recipients of support in practice are often natural persons or SMEs.

⁴ OJ L 347, 20.12.2013, p. 320.

⁵ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (3) As a result, it is appropriate to establish detailed modalities for financing conditions for energy efficiency measures and energy from renewable sources and for their application within the existing legal framework, including the methodology to determine the amount corresponding to the applicable financing conditions and the arrangements for the operation subject to the reimbursement based on financing conditions. The detailed methodology should determine the link between the amount and the fulfilment of the final financing conditions, while the amount should be independent of the cost of the activities within the operation that will contribute to the final financing conditions.
- (4) In particular, in order to ensure that the calculation method used for the purposes of establishing the amount related to the fulfilment of the financing conditions takes due account of reasonable assumptions based on foreseeable trends in technological development and related changes in investment costs for different types of interventions contributing to the overall fulfilment of the financing conditions, the reference period applied should relate to the last years where data is available for similar investments.
- (5) It should be specified how existing provisions on payment applications should be implemented in this context in accordance with Article 131(1), second subparagraph, of Regulation (EU) No 1303/2013.
- (6) In addition, it should be recalled that specific requirements linked to management verifications and audits for operations subject to reimbursement based on financing conditions are set out in Regulation (EU) No 1303/2013, notably in Article 67(1) and Article 125(4)(a) thereof. These should be reflected in the provisions on the set-up of this type of operations as specified in point 4 of the Annex. In particular, verifications and audits should not happen at the level of individual investments given that it is the beneficiary who reports fulfilment of the financing conditions to the managing authority. Furthermore, supporting documents relating to the underlying expenditure should be neither subject to audit, nor to management verifications given that amounts linked to the operation are pre-defined.
- (7) The measures provided for in this Regulation have been subject to consultation of experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making⁶, in accordance with Article 149(3a) of Regulation (EU) No 1303/2013.
- (8) In order to ensure that the designated authorities can effectively make use of the new provisions which apply from 2 August 2018 in accordance with Article 282 of Regulation (EU, Euratom) 2018/1046, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*,

⁶ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

1. This Regulation establishes detailed modalities for financing conditions that may be used for the reimbursement of expenditure by the managing authority to beneficiaries under the financing which is not linked to costs of the relevant operations referred to in point (e) of the first subparagraph of Article 67(1) of Regulation (EU) No 1303/2013 and for their application.
2. The areas of expenditure that may be subject to financing which is not linked to costs shall be energy efficiency measures and energy from renewable sources as detailed in the Annex.

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

- (1) 'financing conditions' means the conditions to be fulfilled for the reimbursement of expenditure under the financing which is not linked to costs, consisting of a series of intermediate and final financing conditions undertaken to contribute towards the fulfilment of a pre-defined objective;
- (2) 'operation subject to reimbursement based on financing conditions' means a single operation within the meaning of Article 2(9) of Regulation (EU) No 1303/2013, consisting of all the tasks implemented to fulfil intermediate and the final financing conditions.

Article 3

Modalities for the financing conditions and their application

1. Final financing conditions shall be determined in accordance with the Annex.
2. Modalities for the application of the financing conditions as regards the methodology for the establishment of the related pre-defined amount of expenditure to be reimbursed and the submission of information to the Commission for the set up of the operation subject to reimbursement based on financing conditions shall be determined in accordance with the Annex.

Article 4

Elements for payment applications

1. The costs calculated on the applicable basis to be included in a payment application in accordance with Article 131(2) of Regulation (EU) No 1303/2013 shall be the pre-defined amount corresponding to each fulfilled financing condition. That amount shall be included in payment applications together with the reference of the concerned

operation, in accordance with the model for payment applications set out in Commission Implementing Regulation (EU) No 1011/2014⁷.

2. The total eligible expenditure for an operation subject to reimbursement based on financing conditions shall not exceed the pre-defined amount of expenditure corresponding to the final financing condition calculated on the basis of the methodologies set out in the Annex.

Article 5
Entry into force

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, 15.2.2019

For the Commission
The President
Jean-Claude JUNCKER

⁷ Commission Implementing Regulation (EU) No 1011/2014 of 22 September 2014 laying down detailed rules for implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for submission of certain information to the Commission and the detailed rules concerning the exchanges of information between beneficiaries and managing authorities, certifying authorities, audit authorities and intermediate bodies (OJ L 286, 30.9.2014, p. 1).