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THE EUROPEAN PARLIAMENT

THE COUNCIL

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**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING REGULATIONS (EU) NO 1301/2013 AND (EU) NO 1303/2013
AS REGARDS SPECIFIC MEASURES TO PROVIDE EXCEPTIONAL FLEXIBILITY
FOR THE USE OF THE EUROPEAN STRUCTURAL AND INVESTMENTS FUNDS
IN RESPONSE TO THE COVID-19 OUTBREAK**

REGULATION (EU) 2020/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2020

amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013
as regards specific measures to provide exceptional flexibility
for the use of the European Structural and Investments Funds
in response to the COVID-19 outbreak

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 177, 178 and point (a) of Article 322(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors¹,

¹ Opinion of 14 April 2020 (not yet published in the Official Journal).

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure¹,

¹ Position of the European Parliament of 17 April 2020 (not yet published in the Official Journal) and decision of the Council of 22 April 2020.

Whereas:

- (1) Member States have been affected by the consequences of the COVID-19 outbreak in an unprecedented manner. The current public health crisis hampers growth in Member States, which in turn aggravates the serious liquidity shortages due to the sudden and significant increase in public investments needed in their healthcare systems and other sectors of their economies. That has created an exceptional situation which needs to be addressed with specific measures.

- (2) In order to respond to the impact of the public health crisis, Regulations (EU) No 1301/2013¹ and (EU) No 1303/2013² of the European Parliament and of the Council have already been amended, by Regulation (EU) 2020/460 of the European Parliament and of the Council³, to allow for more flexibility in the implementation of the programmes supported by the European Regional Development Fund (the ‘ERDF’), the European Social Fund (the ‘ESF’) and the Cohesion Fund (collectively ‘the Funds’) and the European Maritime and Fisheries Fund (the ‘EMFF’). In order to contribute to an effective response to the current public health crisis, the scope of support from the ERDF was considerably expanded.

¹ Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).

² 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 1083/2006 (OJ L 347, 20.12.2013, p. 320).

³ Regulation (EU) 2020/460 of the European Parliament and of the Council of 30 March 2020 amending Regulations (EU) No 1301/2013, (EU) No 1303/2013 and (EU) No 508/2014 as regards specific measures to mobilise investments in the healthcare systems of Member States and in other sectors of their economies in response to the COVID-19 outbreak (Coronavirus Response Investment Initiative) (OJ L 99, 31.3.2020, p. 5).

- (3) However, the serious negative effects on Union economies and societies are becoming worse. It is therefore necessary to provide for exceptional additional flexibility to Member States to enable them to respond to this unprecedented public health crisis by enhancing the possibility to mobilise all non-utilised support from the Funds.
- (4) With a view to alleviating the burden on public budgets responding to the public health crisis, Member States should be given the exceptional possibility to request, for cohesion policy programmes, a co-financing rate of 100 % to be applied for the accounting year 2020-2021, in accordance with budget appropriations and subject to available funding. Based on an assessment of the application of that exceptional co-financing rate, the Commission could propose an extension of this measure.
- (5) In order to provide additional flexibility to Member States for the reallocation of resources with a view to providing tailor-made responses to the public health crisis, possibilities for financial transfers under the Investment for growth and jobs goal between the ERDF, the ESF and the Cohesion Fund should be introduced or enhanced. Furthermore, transfer possibilities between categories of regions should also be exceptionally increased for Member States given the widespread impact of the public health crisis, while respecting Treaty objectives for cohesion policy. Such transfers should not affect the resources under the European territorial cooperation goal, the additional allocations to outermost regions, support to the Youth Employment Initiative (YEI) or the Fund for European Aid to the Most Deprived.

- (6) In order to enable Member States to deploy quickly available resources to respond to the COVID-19 outbreak and taking into account that, given the advanced stage of implementation of the 2014-2020 programming period, the reallocation of resources can only concern resources available for programming for the year 2020, it is justified to exempt, on an exceptional basis, Member States from the need to comply with thematic concentration requirements for the remainder of the programming period.
- (7) In order to enable Member States to concentrate on the necessary response to the COVID-19 outbreak and to reduce administrative burdens, certain procedural requirements linked to programme implementation and audits should be simplified. In particular, Partnership Agreements should no longer be amended for the remainder of the programming period, whether to reflect prior changes in operational programmes or to introduce any other changes. The deadlines for the submission of the annual implementation reports for the year 2019 and for the transmission of the Commission's summary report based on those annual implementation reports should be postponed. As regards the Funds and the EMFF, an extended possibility for audit authorities to make use of a non-statistical sampling method should also be explicitly provided for in respect of the accounting year 2019-2020.

- (8) It is appropriate to specify that eligibility of expenditure should be exceptionally allowed for completed or fully implemented operations that foster crisis response capacities in the context of the COVID-19 outbreak. It should be possible for such operations to be selected even before the necessary programme amendment is approved by the Commission. Specific arrangements for invoking the COVID-19 outbreak as a reason of *force majeure* in the context of decommitment should be provided.
- (9) In order to reduce administrative burdens and delays in implementation where changes in financial instruments are necessary to provide for an effective response to a public health crisis, the review and update of the *ex ante* assessment and updated business plans or equivalent documents, as part of the supporting documents demonstrating that support provided was used for its intended purpose, should no longer be required for the remainder of the programming period. The possibilities for the support for working capital through financial instruments under the European Agricultural Fund for Rural Development (EAFRD) should be extended.
- (10) In order to ensure that Member States can make full use of support from the Funds and the EMFF, additional flexibility should be provided for the calculation of the payment of the final balance at the end of the programming period.

- (11) In order to facilitate the transfers authorised under this Regulation, the condition laid down in point (f) of Article 30(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council¹ regarding use of appropriations for the same objective should not apply in respect of transfers proposed under this Regulation.
- (12) In order to ensure consistency between the approach taken under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and *de minimis* aid, on the one hand, and the conditions for providing support to undertakings in difficulty under the ERDF, on the other, Regulation (EU) No 1301/2013 should be amended to allow for the grant of support to such undertakings in those specific circumstances.

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).

- (13) Since the objectives of this Regulation, namely to respond to the impact of the public health crisis by introducing flexibility measures in the field of providing support from the European Structural and Investment Funds ('ESI Funds'), cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('TEU'). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (14) Given the urgency of the situation related to the COVID-19 outbreak, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.
- (15) In view of the COVID-19 outbreak and the urgent need to address the associated public health crisis and its social and economic consequences, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.
- (16) Regulations (EU) No 1301/2013 and (EU) No 1303/2013 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1
Amendment to Regulation (EU) No 1301/2013

In Article 3(3) of Regulation (EU) No 1301/2013, point (d) is replaced by the following:

- ‘(d) undertakings in difficulty as defined in Union State aid rules; undertakings receiving support complying with Temporary Framework for State aid measures* or Commission Regulations (EU) No 1407/2013**, (EU) No 1408/2013*** and (EU) No 717/2014**** shall not be regarded as undertakings in difficulty for the purpose of this point;

* OJ C 91 I, 20.3.2020, p. 1.

** Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

*** Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).

**** Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).’.

Article 2
Amendments to Regulation (EU) No 1303/2013

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

- (1) in Part Two, Title II, the following Chapter is added:

‘Chapter V

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

Article 25a

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

1. By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), at the request of a Member State, a co-financing rate of 100 % may be applied to expenditure declared in payment applications during the accounting year starting 1 July 2020 and ending 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

Requests for modification of the co-financing rate shall be submitted in accordance with the procedure for the amendment of programmes set out in Article 30 and shall be accompanied by a revised programme or programmes. The co-financing rate of 100 % shall apply only if the relevant amendment of the operational programme is approved by the Commission before the submission of the final application for an interim payment in accordance with Article 135(2).

Before submitting the first payment application for the accounting year starting 1 July 2021, Member States shall notify the table referred to in point (d)(ii) of Article 96(2) confirming the co-financing rate which was applicable during the accounting year ending 30 June 2020 for the priorities concerned by the temporary increase to 100 %.

2. In response to the COVID-19 outbreak, the resources available for programming for the year 2020 for the Investment for growth and jobs goal may, at the request of a Member State, be transferred between the ERDF, the ESF and the Cohesion Fund, irrespective of the percentages referred to in points (a) to (d) of Article 92(1).

For the purpose of those transfers, the requirements laid down in Article 92(4) shall not apply.

Transfers shall not affect resources allocated to the YEI in accordance with Article 92(5) or to the aid for the most deprived under the Investment for growth and jobs goal in accordance with Article 92(7).

Resources transferred between the ERDF, the ESF and the Cohesion Fund under this paragraph shall be implemented in accordance with the rules of the Fund to which the resources are transferred.

3. By way of derogation from Article 93(1) and in addition to the possibility provided for in Article 93(2), resources available for programming for the year 2020 may, at the request of a Member State, be transferred between categories of regions in response to the COVID-19 outbreak.
4. Requests for transfers under paragraphs 2 and 3 of this Article shall be submitted in accordance with the procedure for amendment of programmes set out in Article 30, shall be duly justified and shall be accompanied by the revised programme or programmes identifying the amounts transferred by Fund and by category of region, where relevant.

5. By way of derogation from Article 18 of this Regulation and the Fund-specific Regulations, financial allocations set out in requests for programme amendments submitted or transfers notified pursuant to Article 30(5) of this Regulation, on or after ... [OJ: the date of the entry into force of this amending Regulation], shall not be subject to the requirements on thematic concentration set out in this Regulation or the Fund-specific Regulations.
6. By way of derogation from Article 16, as from ... [OJ: the date of entry into force of this amending Regulation], Partnership Agreements shall not be amended and programme amendments shall not entail the amendment of Partnership Agreements.

By way of derogation from Articles 26(1), 27(1), 30(1) and 30(2), as from ... [OJ: the date of entry into force of this amending Regulation] the consistency of programmes and of their implementation with the Partnership Agreement shall not be verified.

7. For operations that foster crisis response capacities in the context of the COVID-19 outbreak as referred to in the second subparagraph of Article 65(10), Article 65(6) shall not apply.

By way of derogation from point (b) of Article 125(3), such operations may be selected for support by the ERDF or the ESF prior to the approval of the amended programme.

8. For the purposes of point (b) of Article 87(1), where the COVID-19 outbreak is invoked as a reason of *force majeure*, information on the amounts for which it has not been possible to make a payment application shall be provided at an aggregate level by priority for operations whose total eligible cost is less than EUR 1 000 000.
9. The annual report on implementation of the programme referred to in Article 50(1) for the year 2019 shall be submitted by 30 September 2020 for all ESI Funds, by way of derogation from the deadlines set out in the Fund-specific Regulations. The transmission of the summary report to be prepared by the Commission in 2020, in accordance with Article 53(1), may be postponed accordingly.
10. By way of derogation from point (g) of Article 37(2), no review or update of the *ex ante* assessments shall be required where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak.
11. Where financial instruments provide support in the form of working capital to SMEs pursuant to the second subparagraph of Article 37(4) of this Regulation, new or updated business plans, or equivalent documents, and evidence allowing verification that the support provided through the financial instruments has been used for its intended purpose as part of the supporting documents, shall not be required.

By way of derogation from Regulation (EU) No 1305/2013, such support may also be provided by the EAFRD under measures referred to in Regulation (EU) No 1305/2013 and relevant to the implementation of financial instruments. Such eligible expenditure shall not exceed EUR 200 000.

12. For the purposes of the second subparagraph of Article 127(1), the COVID-19 outbreak shall constitute a duly justified case that audit authorities may invoke, based on their professional judgement, to use a non-statistical sampling method for the accounting year starting 1 July 2019 and ending 30 June 2020.
13. For the purposes of application of point (f) of Article 30(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council*, the condition that appropriations are for the same objective shall not apply in respect of transfers under paragraphs 2 and 3 of this Article.

* 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) in Article 130, the following paragraph is added:

- ‘3. By way of derogation from paragraph 2, the contribution from the Funds or the EMFF through payments of the final balance for each priority per Fund and per category of regions in the final accounting year shall not exceed, by more than 10 %, the contribution from the Funds or the EMFF for each priority per Fund and per category of regions as laid down in the decision of the Commission approving the operational programme.

The contribution from the Funds or the EMFF through payments of the final balance in the final accounting year shall not exceed the eligible public expenditure declared or the contribution from each Fund and category of regions to each operational programme as laid down in the decision of the Commission approving the operational programme, whichever is the lower.’

Article 3
Entry into force

This Regulation shall enter into force on the day 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