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

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Subject: Common Provisions Regulation (amended proposal)
- Partial mandate for negotiations with the European Parliament

I. INTRODUCTION

1. On 29 May 2018, the Commission adopted the proposal for the Common Provisions Regulation (CPR)¹. The CPR sets out common provisions for seven shared management funds: the Cohesion Fund, the European Maritime and Fisheries Fund, the European Regional Development Fund, the European Social Fund Plus, the Asylum and Migration Fund, the Border Management and Visa Instrument and the Internal Security Fund.

¹ Doc. 9511/18 + ADD 1.

2. The CPR was presented to the Structural Measures Working Party in June 2018 during the Bulgarian Presidency. The detailed examination of the CPR took place under the Austrian and the Romanian Presidencies. In order to make the discussions more effective and efficient, work within the Council on the CPR was divided in thematic blocks.
3. The Permanent Representatives Committee endorsed (partial) mandates for negotiations with the European Parliament on the various CPR blocks² on 17 December 2018 under Austrian Presidency, and on 15 February, 3 and 17 April, and 29 May 2019 during the Romanian Presidency.
4. On 14 January 2020, together with the proposal for establishing the Just Transition Fund (JTF), the Commission proposed various amendments to the CPR³ in order to embed the JTF as a new fund under the umbrella rules of the CPR.
5. 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 additional amendments to the CPR⁴.

II. WORK WITHIN THE COUNCIL

6. Both amended Commission proposals for the CPR were presented to the Structural Measures Working Party on 4 June, during the Croatian Presidency, followed by detailed examination on 15 June.
7. The Structural Measures Working Party discussed the Presidency compromise proposals on the amended CPR at its meetings on 3, 9 and 16 July, under the German Presidency.

² Doc. 11149/19 (consolidated version of all CPR partial mandates).

³ Doc. 5259/20 + ADD1.

⁴ Doc. 8399/20 + ADD1.

8. Since the amended CPR 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 21 and 21a on Transfers, point (a) of Article 15a (% for higher co-financing rate) as well as Article 106(3) (co-financing rate for the JTF priority).
9. Substantial progress has been made since the detailed examination of the amended CPR proposals 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

10. 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 CPR, as set out in the Annex to this note.

COMMON PROVISIONS REGULATION

[Amended proposal from January 2020]

Commission proposal COM(2018) 375 is amended as follows:

(8) Article 1 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. This Regulation lays down:

(a) financial rules for the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the Just Transition Fund ('JTF'), the European Maritime and Fisheries Fund ('EMFF'), the Asylum and Migration Fund ('AMIF'), the Internal Security Fund ('ISF') and the Border Management and Visa Instrument ('BMVI') ('the Funds');

(b) common provisions applicable to the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF.";

(b) in paragraph 6, the following point (h) is inserted:

"(h) Regulation (EU) [JTF Regulation] (the 'JTF Regulation')(*)

(*) OJ L , , p. .";

(9) Article 4 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

"The JTF shall support the specific objective of enabling regions and people to address the social, economic and environmental impacts of the transition towards the Union's 2030 target for climate and a climate-neutral economy by 2050".

The first subparagraph of paragraph 1 shall not apply to the resources of the ERDF and the ESF+ that are transferred to the JTF [in accordance with Article 21a.]";

- (b) paragraph 2 is replaced by the following:

"2. The ERDF, the ESF+, the Cohesion Fund and the JTF shall contribute to the actions of the Union leading to the strengthening of its economic, social and territorial cohesion in accordance with Article 174 TFEU by pursuing the following goals:

- (a) Investment for jobs and growth in Member States and regions, to be supported by the ERDF, the ESF+, the Cohesion Fund and the JTF; and
- (b) European territorial cooperation (Interreg), to be supported by the ERDF.";

- (c) in paragraph 3, the last sentence is replaced by the following:

"In the case of the ERDF, the ESF+, the Cohesion Fund and the JTF weightings shall be attached to dimensions and codes for the types of intervention established in Annex I.";

- (10) Article 8 is amended as follows:

- (a) point (a) is replaced by the following:

"(a) the selected policy objectives and the specific objective of the JTF, indicating by which of the funds covered by the Partnership Agreement and programmes they will be pursued and a justification thereto, [~~and where relevant, a justification for using the delivery mode of the InvestEU,~~]⁵ taking into account relevant country-specific recommendations, the National Energy and Climate Plan, the principles of the European Pillar of Social Rights and, where relevant, regional challenges;"

- (b) in point (b), the introductory part is replaced by the following:

"(b) for each of the selected policy objectives referred to in point (a) and the specific objective of the JTF;"

- (c) point (c) is replaced by the following:

"(c) the preliminary financial allocation from each of the funds covered by the Partnership Agreement by policy objective at national and where appropriate at regional level, respecting Fund-specific rules on thematic concentration [~~and the preliminary financial allocation for the specific objective of the JTF including any ERDF and ESF+ resources to be transferred to the JTF in accordance with Article 21a];~~"

⁵ Put in square brackets pending the outcome of discussions on Article 10, according to provisional common understanding on CPR Block 1 (doc. 14962/19).

(11) Article 10 is amended as follows:

(a) the title of the Article is replaced by the following:

"Article 10

Use of the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF delivered through InvestEU";

(b) in paragraph 1, the first sentence is replaced by the following:

"1. Member States may allocate, in the Partnership Agreement or in the request for an amendment of a programme, the amount of ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF to be contributed to InvestEU and delivered through budgetary guarantees.";

(12) in Article 11, paragraph 7 is replaced by the following:

Annex IV shall not apply to priorities supported by the JTF [and to the ERDF and the ESF+ resources transferred to the JTF in accordance with Article 21a.] ";

(13) in Article 14, paragraph 1 is amended as follows:

(a) the introductory part is replaced by the following:

"1. For programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF, the Member State shall review each programme, taking into account the following elements:";

(b) the following point (e) is added:

" (e) in addition, for programmes supported by the JTF, the assessment carried out by the Commission, pursuant to point (b) of Article 29(1) of Regulation (EU) 2018/1999(*) .

(*) Regulation (EU) No 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.";

(14) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Each programme shall set out a strategy for the programme's contribution to the policy objectives or to the specific objective of the JTF and the communication of its results.";

(b) in paragraph 2, the first subparagraph is replaced by the following:

"2. A programme shall consist of one or more priorities. Each priority shall correspond to a single policy objective or to the specific objective of the JTF or to technical assistance if it is implemented pursuant to Article 30(4) or Article 32 and may use support from one or more Funds. A priority corresponding to a policy objective shall consist of one or more specific objectives. More than one priority may correspond to the same policy objective or to the specific objective of the JTF.";

(c) paragraph 3 is amended as follows:

(i) in point (a), the following point (viii) is added:

"(viii) in addition, for programmes supported by the JTF, transition challenges identified in the territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation];";

(ii) point (d) is amended as follows:

- point (i) is replaced by the following:

"(i) the related types of actions and their expected contribution to those specific objectives, to macro-regional strategies, sea-basin strategies, and to territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation] supported by the JTF, where appropriate;";

- the following point (viii) is added:

"(viii) in addition, for the specific objective of the JTF, the justification of amounts transferred respectively from the ERDF and the ESF+ resources [in accordance with Article 21a], as well as their breakdown by category of regions, reflecting the types of interventions planned in accordance with the territorial just transition plans set out in Article [7] of Regulation (EU) [JTF Regulation];";

(iii) in point (f), point (i) is replaced by the following:

"(i) a table specifying the total financial allocations for each of the Funds and, where applicable, for each category of region for the whole programming period and by year, including any amounts transferred pursuant to Article 21 [or to Article 21a];";

(d) paragraph 6 is replaced by the following:

"(6) For ERDF, ESF+, Cohesion Fund and JTF programmes submitted in accordance with Article 16, the table referred to in paragraph (3)(f)(ii) shall include the amounts for the years 2021 to 2027 including the flexibility amount.";

(e) the following paragraph 8 is added:

"8. For programmes supported by the JTF, Member States shall submit to the Commission the territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation] as part of the programme or of a request for its amendment.";

(15) in paragraph 5 of Article 19, the first subparagraph is replaced by the following:

"5. For the programmes supported by the ERDF, JTF, Cohesion Fund and ESF+, the Member State may transfer during the programming period an amount of up to 8% of the initial allocation of a priority and no more than 4% of the programme budget to another priority of the same Fund of the same programme. For the programmes supported by the ERDF, the ESF+ and the JTF, the transfer shall only concern allocations for the same category of region.";

(16) Article 20 is replaced by the following:

"Article 20

Joint support from the ERDF, the ESF+, the JTF and the Cohesion Fund

1. The ERDF, the ESF+, the JTF and the Cohesion Fund may jointly provide support for programmes under the Investment for jobs and growth goal.

2. The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of 15% of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation. [That option shall not apply to the resources of the ERDF and the ESF+ that are transferred to the JTF in accordance with Article 21a."];

[(17) in Article 21, the following paragraph 6 is added:

"6. JTF resources, including the resources transferred from the ERDF and the ESF+ in accordance with Article 21a, shall not be transferable to other Funds or instruments pursuant to paragraphs 1 to 5.

The JTF shall not receive transfers pursuant to paragraphs 1 to 5.

The transfer of resources from the ERDF and the ESF+ to the JTF in accordance with Article 21a shall be excluded from the basis of calculation for the purposes of the 5% ceiling established in paragraph 1. "];

(18) the following Article 21a is inserted:

["Article 21a

Transfer of resources from the ERDF and the ESF+ to the JTF

1. The amount of resources available for the JTF under the Investment for jobs and growth goal in accordance with Article [3] of Regulation (EU) [JTF Regulation], shall be complemented with resources from the ERDF, the ESF+ or a combination thereof, of the category of regions where the concerned territory is located. The total of the ERDF and the ESF+ resources transferred to the JTF shall be at least one and half times the amount of JTF support, but shall not exceed three times the amount of that support. In no case shall the resources transferred from either the ERDF or the ESF+ exceed 20% of the respective ERDF and ESF+ allocation to the Member State concerned.

The respective transfers from the ERDF and the ESF+ resources to the priority or priorities supported by the JTF shall reflect the types of interventions in accordance with the information set out in the programme pursuant to point (viii) of Article 17(3)(d). Such transfers shall be considered definitive.

2. The JTF resources, including the resources transferred from the ERDF and the ESF+, shall be implemented in accordance with the rules set out in this Regulation and in Regulation (EU) [JTF Regulation]. The rules set out in Regulation (EU) [ERDF/CF Regulation] and in Regulation (EU) [ESF+ Regulation] shall not apply to the ERDF and ESF+ resources transferred in accordance with paragraph 1.";

(19) in Article 25, paragraph 1 is replaced by the following:

"1. The ERDF, the ESF+, the JTF [, the EAFRD as referred to in Regulation XX/XXXX] and the EMFF may support community-led local development.";

(20) in point (b) in paragraph 4 of Article 30, the following point is inserted:

"(iii)bis for the JTF support: 3,75%.";

(20a) in point (b) in paragraph 5 of Article 30, the following point is inserted:

"(iii)bis for the JTF support: 3,75%.";

(21) in paragraph 2 of Article 35, point (b) is replaced by the following:

"(b) the final performance report for programmes supported by the Funds;"

(22) in paragraph 3 of Article 36, the first subparagraph is replaced by the following:

"3. For programmes supported by the Funds, the Member State shall no later than one month before the review meeting provide the Commission with concise and updated information related to the progress in programme implementation.";

(23) in Article 38, paragraph 1 is replaced by the following:

"1. For programmes supported by the Funds, each managing authority shall submit to the Commission a final performance report of the programme by 15 February [2031].";

(24) in point (c) of Article 45(1), point (ii) is replaced by the following:

"(ii) operations supported by the ESF+, the JTF, the EMFF, the ISF, the AMIF and the BMVI the total cost of which exceeds EUR 100 000;";

(25) in paragraph 1 of Article 48, the second subparagraph is replaced by the following:

"Where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid or for which the calculation of simplified cost options by the Managing Authority cannot be performed in any of the ways listed in paragraph 2. Where flat-rate financing is used, only the categories of costs to which the flat-rate applies may be reimbursed in accordance with point (a) of the first subparagraph.";

(26) in Article 51, paragraph 2 is replaced by the following:

"2. For operations supported by the AMIF, the ISF, the BMVI, the ESF+, the JTF and the ERDF, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate.";

(27) Article 57 is amended as follows:

(a) in paragraph 3, the following subparagraph is added:

"For the JTF, expenditure related to operations shall contribute to the implementation of the relevant territorial just transition plan set out in accordance with Article [7] of the Regulation (EU) [JTF Regulation].";

(b) in paragraph 7, the second subparagraph is replaced by the following:

"For the ERDF, the Cohesion Fund and the JTF, that shall be the case where a new type of intervention referred to in Table 1 of Annex I or, for the AMIF, the ISF and the BMVI, in the Fund-specific Regulations is added in the programme.";

(28) in Article 59, paragraph 2 is replaced by the following:

"2. Operations supported by the ESF+ or by the JTF in accordance with [points (h), (i) and (j) of Article [4(2)]] of Regulation (EU) [JTF Regulation] shall repay the support when they are subject to an obligation for maintenance of investment under State aid rules.";

(29) in paragraph 2 of Article 73, the second subparagraph is replaced by the following:

"The statistical sample may cover one or more programmes receiving support from the ERDF, the Cohesion Fund, the JTF and the ESF+ and, subject to stratification where appropriate, one or more programming periods according to the professional judgement of the audit authority.";

(30) in paragraph 3 of Article 74, the first subparagraph is replaced by the following:

"3. Operations for which the total eligible expenditure does not exceed EUR 400 000 for the ERDF and the Cohesion Fund, EUR 350 000 for the JTF, EUR 300 000 for the ESF+, EUR 200 000 for the EMFF, the AMIF, the ISF and the BMVI shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed.";

(31) in Article 96, paragraph 5 is replaced by the following:

"5. With regard to the final accounting year, the Commission shall pay or recover the annual balance of the accounts for programmes supported by the Funds no later than two months after the date of acceptance of the final performance report as referred to in Article 38.";

(32) in Article 98, the following paragraph 6 is added:

"6. The Fund-specific rules for the JTF may lay down specific bases for financial corrections by the Commission linked to the under-achievement of targets established for the JTF.";

(33) in Article 99, paragraph 3 is replaced by the following:

"3. The part of commitments still open on 31 December [2029] shall be decommitted if the assurance package and the final performance report have not been submitted to the Commission by the time limit set out in Article 38(1).";

[(34) in paragraph 3 of Article 106, the following subparagraph is inserted:

"The co-financing rate for the priority supported by the JTF shall not be higher than the co-financing rates set out in points (a), (b) and (c) of the first subparagraph applicable to the region where the territory or territories identified in the territorial just transition plans in accordance with Article [7] of Regulation (EU) [JTF Regulation] are located.";

(35) Annexes I, II, V and VII are amended in accordance with the Annex to this proposal.

Commission proposal COM(2018) 375 is amended as follows:

(4) in Article 1, paragraph 2 is replaced by the following:

“2. This Regulation shall not apply to the Employment and Social Innovation strand of the ESF+ nor to the direct or indirect management components of the EMFF, the AMIF, the ISF and the BMVI, except for technical assistance at the initiative of the Commission.”;

(5) in Article 8, point (d) is replaced by the following:

“(d) where relevant, the breakdown of financial resources by category of regions drawn up in accordance with Article 102(2) and the amounts of allocations proposed to be transferred pursuant to Articles 21 and 105, including a justification for such transfers;”;

(6) Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Member States may request, in the Partnership Agreement or in the request for an amendment of a programme, the transfer of up to [5%] in total of the initial national allocation of each Fund to any other instrument under direct or indirect management.

Member States may also request, in the Partnership Agreement or in the request for an amendment of a programme, the transfer of up to [5%] in total of the initial national allocation of each Fund to another Fund or Funds. Member States may request an additional transfer of up to [5%] in total of the initial national allocation by Fund between the ERDF, the ESF+ or the Cohesion Fund within the Member State’s global resources under the Investment for jobs and growth goal.”;

(b) paragraph 3 is replaced by the following:

“3. Requests for an amendment of a programme shall set out the total amount transferred for each year by Fund and by category of region, where relevant, shall be duly justified and shall be accompanied by the revised programme or programmes in accordance with Article 19.”;

(c) paragraph 5 is replaced by the following:

“5. Where the request concerns an amendment of a programme, only resources of future calendar years may be transferred.”;

(7) the title of Chapter III of Title II is replaced by the following:

“Measures linked to sound economic governance and to exceptional and unusual circumstances”;

(8) the following Article 15a is inserted:

“Article 15a⁶

Temporary measures for the use of the Funds in response to exceptional and unusual circumstances

1. Where the Council after [*date of entry into force of this Regulation*], has recognised the occurrence of an unusual event outside the control of one or more Member States, which has a major impact on the financial position of the general government or a severe economic downturn for the euro area or the Union as a whole as referred to in the tenth subparagraph of Article 5(1), the fourth subparagraph of Article 6(3), the tenth subparagraph of Article 9(1) and the fourth subparagraph of Article 10(3) of Regulation (EC) No 1466/97(**) or the occurrence of unexpected adverse economic events with major unfavourable consequences for government finances as referred to in Articles 3(5) and 5(2) of Regulation (EC) No 1467/97, the Commission may, on the request of one or more Member States concerned, adopt by way of an implementing decision and for the period defined in that decision one or more of the following measures provided that they are strictly necessary to respond to such exceptional or unusual circumstances:

- (a) increase interim payments by [10] percentage points above the co-financing rate applicable, not exceeding 100%, by way of derogation from Article 106(3) and Article 106(4);
- (b) allow the authorities of a Member State to select for support operations that have been physically completed or fully implemented before the application for the funding under the programme is submitted to the managing authority, by way of derogation from Article 57(6), provided that the operation is in response to the exceptional circumstances;
- (c) provide that expenditure for operations in response to such circumstances may be eligible from the date on which the Council endorsed the occurrence of those circumstances, by way of derogation from Article 57(7);
- (d) extend the deadlines for the submission of documents and submission of data to the Commission by up to 3 months, by way of derogation from Article 36(5), Article 37(1), Article 39(2) and the first subparagraph of Article 44(3).

⁶ *Recital (20a) is modified as follows:*

"(20a) 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 Funds 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 Funds. The Commission should also monitor the implementation and assess the appropriateness of the measures."

2. The Commission shall monitor the implementation of the measures adopted under paragraph 1 and assess whether they are sufficient for facilitating the use of the Funds 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.

(* Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ L 209, 2.8.1997, p. 1).”;

(9) in Article 111(1), point (b) is replaced by the following:

“(b) the total cost of the operation exceeds EUR 5 million;”;

(10) Annexes I, II and V are amended in accordance with the Annex to this proposal.