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'I/A' ITEM NOTE

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

Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy **(first reading)**

- Adoption of the Council's position at first reading and of the statement of the Council's reasons
= Statements

Statement by Hungary

The procedure towards the adoption of the Cohesion Policy regulations has reached another important step. Hungary sees it necessary to reiterate its earlier statement regarding the representation and interpretation of gender in these regulations.

Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Hungary ensures equality between women and men within the framework of its national legal system in accordance with internationally binding human rights instruments and within the framework of fundamental values and principles of the European Union.

For these reasons Hungary interprets the concept of “gender“ as reference to sex, in line with Article 8, 10, 19 and 157 of the Treaty on the Functioning of the European Union and Article 21 and 23 of the Charter of Fundamental Rights of the European Union.

Furthermore Hungary is convinced that the content of gender is not appropriate to be defined in these legislative documents.

In line with these and its national legislation, Hungary interprets the concept of ‘gender’ as reference to ‘sex’ and the concept of ‘gender equality’ as reference to the ‘equality between men and women’ in the Regulations. As regards the breakdown of data, Hungary believes that the first line of Annex I and Annex II of the ESF+ Regulation (and also footnote 27 in Annex III of JTF Regulation) should be applied and refer to the term “gender” and the parenthesis as a whole and not only one of the subcategories listed there.

Bearing in mind the fact that determining the content of the term “gender” falls under the exclusive competence of the Member States, the relevant recitals, articles, annexes and footnotes should be understood as referring to the term gender interpreted in accordance with national legislation.

Statement by Malta

Malta welcomes the formal adoption of the Common Provisions Regulation (CPR). Malta nevertheless regrets that investments in road related infrastructure are assigned a zero climate contribution coefficient and are not given similar weighting to rail transport. This situation will inevitably place Member States without a possible rail transport system at a disadvantage.

Being a small island Member State with no possibility of railways and where mass transport systems are not feasible, the upgrading of roads is necessary for Malta in the same way that investments in railways are required for those Member States that will enhance their share of rail transport. Malta recalls that its unique national circumstances and its limited emissions reduction potential make investments in more efficient road infrastructure, in conjunction with the electrification of vehicles, one of the few key opportunities for Malta to continue building on a holistic approach towards decarbonisation and progress towards climate neutrality. These same national circumstances are also the main contributing factor to the absence of railways.

This also has implications for the planning of projects and the flexibility in programming. As Annex I does not capture Malta's specific realities and limitations, Malta will have to cumulate from all projects in order to reach the targets set. This constrains the possibility to tailor projects to Malta's specific needs, leaving little possibility for other projects. Malta therefore calls on the Commission to show the necessary flexibility during the planning and programming of the Funds given the uniqueness of this case.

Statement by Poland

Equality between women and men is enshrined in the treaties of the European Union as a fundamental right. Poland ensures equality between women and men within the framework of the Polish national legal system in accordance with internationally binding human rights instruments and within the framework of fundamental values and principles of the European Union. For these reasons, in wordings referring to gender Poland will interpret it as a equality between women and men, according to Article 8 TFEU.

Statement by Ireland

Ireland supports the Council position at first reading on all of the regulations that form part of the post 2020 cohesion legislative package. Ireland notes Article 80, Common Provisions Regulation (ST 6674/21 + ADD 1 + ADD 2), on single audit arrangements, and regrets the link agreed between participation in EPPO and access to a simplified audit. Given its common law system, Ireland is not participating in EPPO and therefore cannot avail of these simplified audit arrangements. Ireland believes this is contrary to the principle of equal treatment of Member States and the principle enshrined in Article 327 TFEU according to which enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it.

Statement by the Commission

On clearance of pre-financing:

The payment ceilings in the MFF regulation took into account the assumption that all pre-financing would be cleared annually. The Commission considers that the agreement reached by the co-legislators on the CPR might result in going beyond the applicable MFF ceilings for payment appropriations, taking into account the expected payment profiles. This might result in a payment backlog in the second half of the next period.

On structured dialogue under Temporary measures for the use of the Funds in response to exceptional and unusual circumstances:

The provisions adopted by the co-legislators require the Commission to immediately inform the Parliament and the Council about the assessment of the situation regarding the exceptional and unusual circumstances. The co-legislators also require the Commission to inform them immediately about the envisaged follow-up through temporary measures for the use of the funds and to take due consideration of the positions taken and views expressed through the structured dialogue to which the Commission may be invited by the Parliament or the Council.

Those requirements are not in accordance with Article 291(2) and (3) TFEU and with the Comitology Regulation No 182/2011, which do not provide for any involvement of the Parliament and the Council in the control of the exercise of the implementing powers conferred on the Commission. They may result in situations where the Commission's implementing powers would be constrained. Therefore the Commission can only satisfy these requirements in so far as these do not impinge on its implementing powers as they are regulated under Article 291 TFEU and the Comitology Regulation No 182/2011.

These provisions cannot in any event be replicated in a different legal framework where no exceptional and unusual circumstances are provided for.

On further measures to protect the EU budget and the Next Generation EU against fraud and irregularities by requiring an obligatory use of a single data mining tool provided by the Commission:

In the Inter-institutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap for the introduction of new own resources, Points 30 to 33 require the Commission to make available an integrated and

interoperable information and monitoring system including a single data-mining and risk-scoring tool to access and analyse the required data with a view to a generalised application by Member States. In addition, the three institutions agreed to sincerely cooperate, in the course of the legislative procedure relating to the relevant basic acts, to ensure the follow up to the **European Council** conclusions of July 2020 regarding this element.

The Commission considers that the agreement reached by the co-legislators under Article 69(2) (responsibilities of Member States) on the obligatory use of a single data-mining tool and the collection and analysis of data on the beneficial owners of the recipients of funding is not sufficient to enhance the protection of the Union budget and Next Generation EU against fraud and irregularities and to ensure efficient checks on conflicts of interests, irregularities, issues of double funding, and criminal misuse of the funds. Therefore, the approach agreed by the co-legislators in the Common Provisions Regulation does not appropriately reflect the desired ambition and spirit of the Inter-institutional Agreement.

On the protection of the EU budget through the use of a percentage retention of payments to shared management programmes:

The Commission considers that the agreement by the co-legislators to reduce the retention rate on shared management payments from 10% to 5% creates an increased risk of the EU budget paying amounts that are affected by irregularities.

To minimise this risk, the Commission will make an appropriate use of interruptions and suspensions of payments to programmes whenever it considers that the 5% retention rate is insufficient to cover the amount of any potential irregularities.