



## CRII Q&A platform, date of export: 11. 5. 2020 – 15.00

On this site you will find the **answers to your questions** related to the implementation of the **Coronavirus Response Investment Initiative**.

The questions addressed on this site are those that can be **useful to all Member States**. Country specific questions will be dealt with in the dedicated country teams.

Please send your questions to EC-CORONA-RESPONSE-INVESTMENT-SECRETARIAT@ec.europa.eu. The Commission answers will be posted as soon as possible on this site.

**Source:** <https://webgate.ec.europa.eu/fpfis/wikis/display/CORONAVIRUSRII/Coronavirus+Response+Investment+Initiative>

### **What has the Commission proposed?**

The European Commission has adopted a multipronged strategy to counter the economic impact of the coronavirus pandemic. The strategy includes using the full flexibility of the fiscal and state-aid frameworks, mobilising the EU budget to allow the European Investment Bank Group to provide short-term liquidity to SMEs and directing €37 billion to the fight against coronavirus under the Coronavirus Response Investment Initiative.

Here are more details about the different instruments.

You will find more information about technical issues regarding the implementation of the Coronavirus Response Investment Initiative in the respective categories on this website.

### ***Coronavirus Response Investment Initiative***

Under this new initiative, the Commission proposes to direct EUR 37 billion under Cohesion policy to the fight against the Coronavirus crisis. To this effect, the Commission proposes to relinquish this year its obligation to request Member States to refund unspent pre-financing for the structural funds. This amounts to about EUR 8 billion from the EU budget, which Member States will be able to use to supplement EUR 29 billion of structural funding across the EU. This will effectively increase the amount of investment in 2020 and help to front-load the use of the as yet unallocated EUR 28 billion of cohesion policy funding within the 2014-2020 cohesion policy programmes. The Commission calls upon the European Parliament and the Council to swiftly approve this proposal, so that it can be adopted within the next two weeks.

In addition, the Commission is proposing to extend the scope of the EU Solidarity Fund by also including a public health crisis within its scope, in view of mobilising it if needed for the hardest hit Member States. Up to EUR 800 million is available in 2020.

### ***State aid Framework Flexibility***

On 19 March, the European Commission has adopted a Temporary Framework which enable Member States to use the full flexibility foreseen under State aid rules to support the economy in the context of the COVID-19 outbreak. The Temporary Framework will help target support to the economy, while limiting negative consequences to the level playing field in the Single Market.

Together with many other support measures that can be used by Member States under the existing State aid rules, the Temporary Framework enables Member States to ensure that sufficient liquidity remains available to businesses of all types and to preserve the continuity of economic activity during and after the COVID-19 outbreak.

The State aid Temporary Framework to support the economy in the context of the COVID-19 outbreak, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union, recognises that the entire EU economy is experiencing a serious disturbance. To remedy that, the Temporary Framework provides for five types of aid:

(i) Direct grants, selective tax advantages and advance payments: Member States will be able to set up schemes to grant up to €800,000 to a company to address its urgent liquidity needs.

(ii) State guarantees for loans taken by companies from banks: Member States will be able to provide State guarantees to ensure banks keep providing loans to the customers who need them.

(iii) Subsidised public loans to companies: Member States will be able to grant loans with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.

(iv) Safeguards for banks that channel State aid to the real economy: Some Member States plan to build on banks' existing lending capacities, and use them as a channel for support to businesses – in particular to small and medium-sized companies. The Framework makes clear that such aid is considered as direct aid to the banks' customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.

(v) Short-term export credit insurance: The Framework introduces additional flexibility on how to demonstrate that certain countries are not-marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.

More information at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_496](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496)

### ***European Fiscal Framework Flexibility***

The Commission has also proposed on 20 March 2020 the activation of the general escape clause of the Stability and Growth Pact (SGP) as part of its strategy to respond quickly, forcefully and in a coordinated manner to the coronavirus pandemic. Once endorsed by the Council, it will allow Member States to undertake measures to deal adequately with the crisis, while departing from the budgetary requirements that would normally apply under the European fiscal framework.

Member States have already adopted or are adopting budgetary measures to increase the capacity of their health systems and provide relief to those citizens and sectors that are particularly impacted. These measures, together with the fall in economic activity, will contribute to substantially higher budgetary deficits.

The proposal represents an important step in fulfilling the Commission's commitment to use all economic policy tools at its disposal to support Member States' in protecting their citizens and mitigating the pandemic's severely negative socio-economic consequences.

It recognises that the coronavirus pandemic is a major shock for the European and global economies. The Commission calls on the Council to endorse its proposal as quickly as possible.

More information at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_499](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_499)

### ***European Investment Fund***

European Investment Fund's response to COVID-19 forms part of an integrated set of short- and medium-term measures put forward by the European Investment Bank Group and the European Commission, dedicated primarily to mitigating the negative economic consequences for impacted micro-, small and medium-sized enterprises and mid-cap companies.

The European Commission communication issued on Friday 13th March and the subsequent European Investment Bank Group communication published on Monday 16th March, set the framework for an immediate response, in which European Investment Fund plays a critical role.

As part of the immediate measures, EUR 1bn within the European Fund for Strategic Investments (EFSI) will be used to increase existing guarantee facilities managed by European Investment Fund:

- InnovFin SME Guarantee and
- COSME Loan Guarantee Facility

In addition to the extra funds that will be made available to financial intermediaries under these guarantee facilities, European Investment Fund and European Commission are working intensively on a modification of the terms & conditions thereunder to better respond to extraordinary circumstances. In this context, European Investment Fund is taking into account feedback it receives from stakeholders and market participants.

For instance, the European Investment Fund and the European Commission are taking the necessary steps to:

- prioritise new working capital finance,
- increase the guarantee rate for newly originated working capital loans,
- provide for more flexible use of the guarantee for revolving credit transactions.

For portfolios already benefitting from InnovFin or COSME guarantee coverage, we are taking the necessary steps to allow for rescheduling, postponement or credit holidays of underlying financing by the financial intermediaries.

The respective measures will be available in the form of guarantees and counter-guarantees for existing and/or new financial intermediaries. European Investment Fund is fully committed to simplifying access to these measures by reducing the administrative processes to the minimum possible.

Existing financial intermediaries who have entered into an agreement with European Investment Fund under at least one of the above-mentioned facilities would be able to benefit from a fast track process resulting in significant acceleration of the time to market.

It is expected that European Investment Fund will be able to roll out these measures shortly, with exact terms & conditions and the application process to be announced on the European Investment Fund website.

More information at: [https://www.eif.org/what\\_we\\_do/covid-19-response/index.htm](https://www.eif.org/what_we_do/covid-19-response/index.htm)

<b>BE</b>	We are also interested in the other instruments announced by the European Commission regarding state aid, SGP, the EIF,... Could the Commission give more information on these aspects?
<b>FR</b>	La Commission peut-elle établir une liste des nouveaux outils mis en place ?

# 1. Structural Funds – horizontal questions

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) about 3 hours ago

**The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.**

***Any reference in the Q&A to "national authorities" or "the Member State" should be read - for ETC - as referring to the "managing authority" or "the Member State hosting the MA".***

## **COVID-19 and Force Majeure**

COVID-19 and force majeure - General

The COVID-19 outbreak has affected Member States in a sudden and dramatic manner and will have implications on the implementation of EU programmes. The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to flexibly respond to the rapidly emerging needs. Furthermore, the Commission is open to discuss with Member States the best possible ways to use the European Structural and Investment Funds to mitigate the impact of the coronavirus crisis and intends to assign top priority to adopting all decisions needed for the fast deployment of funds.

Several Member States have raised the question whether the outbreak can be regarded as an instance of force majeure. That concept is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. In Union law, the notion of force majeure <sup>[1]</sup> generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. Where Union law refers to reasons of force majeure, all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated on a case-by-case basis. Force majeure may be conceived even more restrictively under national law.

There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as a force majeure event and thus constitute a valid justification for the incapacity to comply with an obligation. However, it is not clear that the outbreak is necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak (for example, the unavailability of staff due to quarantine in a country because of the outbreak). Equally, the Commission will follow the same principles in assessing the compliance of Member States with their obligations.

In any case, all due care must be taken to avoid, mitigate and minimise the consequences of the event.

It is underlined that the legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances. This concerns in particular rules on the management and control system, which remain an important safeguard for the regularity of operations. It

should be noted that for EAFRD also the provisions on force majeure laid down in Regulation 1306/2013 apply.

Please also note that for EU spending programmes under direct/indirect management, the Commission has issued guidance with regard to the implications of the COVID-19 outbreak. For example, according to that guidance, where individuals who were to take part in meetings or events are prevented from doing so because of COVID-19, expenses of travel or accommodation that could not be cancelled and which are not reimbursed from other sources should be regarded as eligible costs. Furthermore, where the execution of contracts is impeded because of COVID-19, substitute performance or delayed performance could be permitted if requested and justified by the beneficiary/contractor. Finally, due to the COVID-19 outbreak, an extension of the deadlines for submission of proposals or tenders under on-going Union award procedures may be considered.

Further details are added in response to the more specific questions below.

*[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case 145/85 Denkvit België [1987] ECR 565, paragraph 11; Case C-377/03 Commission v Belgium [2006] ECR I-9733, paragraph 95; and Case C-218/09 SGS Belgium and Others [2010] ECR I-2373, paragraph 44*

**PL** Is the interpretation of the concept of force majeure prepared and how will it possibly be implemented?

**LT** Could quarantine in the country be equated with force majeure? We would like to COM explanation in written for as regards force majeure regime and its implications on management of funds.

**SI** We are in the state of force majeure, we understand that there is no doubt about it and that the provisions of ESIF regulations, related to force majeure, apply in the current situation?

Case-by-case assessment of force majeure

The concept of force majeure is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. Where Union law refers to reasons of force majeure, it requires the fulfilment and demonstration, on a case-by-case basis, of three cumulative conditions set out by the Court of Justice<sup>[1]</sup>. Force majeure may be conceived even more restrictively under national law.

There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as a force majeure event and thus constitute a valid justification for the incapacity to comply with an obligation. However, the COVID-19 outbreak is not necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak. This assessment should also comprise examination of whether all due care has been taken to avoid, mitigate and minimize the consequences of the event. *Case-by-case assessment is therefore inevitable to establish whether flexibility can be exercised.*

Managing authorities, provided this is in line with national law, *after case-by-case assessment*, may decide to grant the same flexibility to operations which, on the basis of their professional judgment, can be considered to have been affected in the same or similar manner and to the same extent by the COVID-19 outbreak (e.g.: giving the same extension of time limit for the execution of operations not completed during the confinement period because of a lack of workforce/impossibility of intervention of service providers). As advised in the reply '*Flexibility to adjust affected operations – general*', in their actions related to addressing the specific circumstances due to the COVID-19 outbreak, national authorities should take into account the principles of proportionality, equal treatment, as well as transparency.

Regulation (EU) [2020/xxx](#) (Coronavirus Response Investment Initiative Plus, CRII Plus) contains an administrative simplification to the application of the exception to decommitment under Article 87(1)(b) CPR, whereby, when 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 is to be provided at an aggregate level by priority for operations of total eligible cost of less than EUR 1 million. This simplification, however, only applies for decommitment, where an exception linked to force majeure is already explicitly stated in the CPR.

For the EAFRD, the COVID-19 outbreak can be recognised as a case of force majeure allowing for a derogation to prevent decommitment of funds in 2020. The Commission will examine any requests from the competent authorities in the light of the provisions related to cases of force majeure of Article 38 of Regulation (EU) 1306/2013.

[1] See '[COVID-19 and force majeure – General](#)' for more detail

**PL** The EC indicated that the application of force majeure should be on the case by case basis. However, force majeure (COVID19) may influence hundreds of projects. Would it be possible to make decision by Managing Authority that the same type of projects (e.g. under the same priority axis) are influenced by force majeure and some obligations imposed on beneficiaries will be reduced (implemented during specified period of time, implemented on a specified territory). If yes, in such cases the irregularity allegation by audit services should be excluded ex ante?

Further Commission Action, Legislation

The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy funds to flexibly respond to the rapidly emerging needs in the most exposed sectors, such as healthcare, SMEs and labour markets, and help the most affected territories in Member States and their citizens. The Commission proposals of 13 March 2020 will allow Member States to benefit from more financial back-up and targeted assistance. The CRII proposal will increase the amount of liquidity available to Member States for operations concerning the fight against the COVID-19 outbreak, eligible as from 1 February 2020 for financing under the ESI Funds, and will also extend the scope of the EU Solidarity Fund.

Furthermore, the Commission is open to discuss with the Member States about the best possible way how the European Structural and Investment Funds might help to mitigate the impact of the coronavirus crisis. In case reprogramming of the funds is needed, the Commission will cooperate with the Member States for the preparation of amendments to the current programmes. If such amendments are non-substantial modifications as referred

to in the CRII proposal, they will not require approval by a Commission decision. Otherwise, once agreed, the amendments will be approved by the Commission as a priority.

The Commission will continue to examine carefully any additional needs identified with Member States resulting from the current situation.

**PL**

Does the EC envisage the development of detailed solutions (change of law, guidelines, instructions) in relation to issues related to the suspension of the implementation of programs and projects in connection with Covid 19?

**Multiple MS**

Several MS have made proposals for further changes in the legislation.

## **Ongoing implementation - eligibility & flexibility**

Eligibility of expenditure affected in operations - General

See also the section 'COVID-19 and force majeure' above.

As an introductory remark regarding eligibility of cost of operations impacted by the COVID-19 outbreak, it should be recalled that according to Article 65(1) Regulation (EU) No 1303/2013 (CPR), "[t]he eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules."

It is up to the national authorities to check and assess on a case-by-case basis the eligibility of expenditure linked to operations impacted by the COVID-19 outbreak. As set out above, this assessment will have to be carried out mainly in the light of national eligibility rules, also taking into account EU rules, including fund-specific rules, where they determine the eligibility of expenditure. While the Commission does not have detailed knowledge of the specific national rules, it is recommended to take into account the following general remarks, and specific considerations based on them.

1. The legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. This concerns in particular rules on the management and control system (including e.g. the requirement to set up procedures to ensure an adequate audit trail). These rules remain an important safeguard for the regularity of operations. For the EAFRD, the rules for the CAP laid down in Regulation 1306/2013 equally apply.
2. It must be checked whether the operations were impacted by the COVID-19 outbreak.
3. Any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable. In line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: [...]

*"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The*



*circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."*

Taking into account the fact that the Coronavirus crisis may qualify as unforeseeable, contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.

In addition, Art 72(1)(e) of Directive 2014/24/EU allows for non substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms. Article 72(1)(c) of the same Directive also allows for contract modifications without a new procurement procedure in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50 % of the value of the original contract or framework agreement.

4. Additionally, the beneficiary should exercise due care to claim any amounts/compensation from insurance or any other sources. The amounts constituting a genuine cost (including, e.g., costs incurred as a result of the necessary changes in work methods such as a purchase of digital equipment or capacities) for the beneficiary can be considered eligible. Any amounts received by insurance or compensation from other sources (e.g. liability insurance coverage compensating for the non-fulfilment of a contract, travel insurance compensating for travel expenses of a cancelled event, reimbursable travel and accommodation costs, etc.) must therefore be deducted from eligible expenditure.

Based on these general remarks, regarding expenditure affected in ongoing operations by the COVID-19 outbreak, the following considerations can be made.

National authorities must analyse whether the expenditure at stake (e.g. expenses of travel or accommodation that could not be cancelled and which are not reimbursed from other sources in cases where participation in meetings or events had to be cancelled due to circumstances related to the COVID-19 outbreak – whether personal or organisational), should be regarded as eligible costs in the light of national rules (also taking into account EU rules, including fund-specific rules, where they determine the eligibility of expenditure).

In their actions related to addressing the specific circumstances due to the COVID-19 outbreak, national authorities should take into account the principles of proportionality, equal treatment, as well as transparency (i.e. necessary communication measures should be taken to properly inform beneficiaries).

LV

Dear colleagues, we kindly urge the Commission to provide us with the guidance in the force majeure situation related to COVID. We would appreciate the Commission's guide as to the eligibility of related expenditure (losses suffered beyond the influence of parties) the soonest possible to alleviate the stress and pressure from our partners and beneficiaries. The EC reply is very important to us on the attribution of potential costs/losses to ESIF in justified situations in case of COVID not only from the Technical Assistance, but also from the Specific Objectives. We have a horizontal explanation from EC services on how to act on ERASMUS and

	<p>other EU instruments. Our institutions involved in the management of EU funds and beneficiaries request clarification from the Managing Authority – we cannot provide this until there is a clear EC response that may or may not be attributed to ESIF (co-financed by the EFSI) in justified cases, ie what should be considered justified. In addition, yesterday an emergency situation has been declared in Latvia in this regard</p>
<b>HR</b>	<p>In light with the latest information on COVID -19 and the fact that it has spread from China to all Member States we are all facing its negative effects. Economic and financial consequences of COVID-19 situation may not yet be certain, but it is foreseeable that will seriously affect both public and private entities. Among health and social impacts, Croatian beneficiaries are facing financial burden caused by the cancelled events. In this respect, OPCC Managing Authority is trying to mitigate negative effects on cash balances of beneficiaries by setting specific cost verification requirements related to scheduled but cancelled events.</p> <p>Basic practice for verification and acceptance of the incurred expenditure is to have proper audit trail such as invoice or equivalent, proof of payment or equivalent and evidence that activity is conducted (such as attendance list, minutes of the meeting, certificate of attendance etc. depending of the nature of the event). Having in mind that majority of scheduled events are being cancelled by the pandemic in all over the Europe and wider, the MA proposes to have an adjusted/tailored approach limited in time and scope for such expenditures. This short-term measure would be applied to planned but cancelled events (such as fairs and conferences) and related expenditure such as traveling tickets, hotel accommodation costs, fees and other costs related to the cancelled event/s which were paid by the beneficiary with no possibility of rescheduling or refund. The mentioned costs must be envisaged in the operation and related to project activities.</p> <p>Taking into account above mentioned we are interested in EC opinion on the proposed measure.</p>
<b>ETC</b>	<p>We are receiving questions from several Interreg programmes on eligibility of expenditure of cancelled missions and meetings due to the Corona-virus.</p>
<b>ETC</b>	<p>The 2 Seas Programme are anxious to have information about the eligibility of expenditures or otherwise related to the cancellation/postponement of events related to the coronavirus crisis.</p>
<b>DE-CZ ETC</b>	<p>The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the <u>project</u> implementation due to the closure of the internal EU borders and/or local organisations involved in the project implementation. Are expenditure eligible, such as cancellation fees for contracts with third parties?</p>
<b>SI-HU ETC</b>	<p>What can we do with expenditures where printing of posters with certain dates was done and now if they repeat it on another date it wouldn't be cost effective. How to prove this to audit authority so that they will understand?</p>

<b>EE- LV ETC</b>	<p>Position of the Managing Authority</p> <p>Covid-19 has been recognized by the WHO as a pandemic[1], so it is considered to be a case of <i>force majeure</i> and costs for activities cancelled due to the proliferation of Covid-19 are eligible under the following conditions:</p> <ul style="list-style-type: none"> <li>the insurance contract does not cover the expenses incurred, based on the decision of the insurer or other written document (e.g. insurance policy or general conditions of insurance);</li> <li>the beneficiary has exhausted all possibilities to reimburse the expenditure incurred;</li> <li>the beneficiary submits via e-MS with partner report: <ul style="list-style-type: none"> <li>- information on abandonment of activities, in case of simplified cost reimbursement methods merely this information will be sufficient;</li> <li>- proof that the beneficiary cannot reimburse or can reimburse only partly the amount paid to the organizer of activity;</li> <li>- credit notes (accommodation, airline tickets, etc.);</li> <li>- documentation on expenses that have not been reimbursed.</li> </ul> </li> </ul> <p>As regards costs for activities cancelled due to the proliferation of Covid-19, which do not fall exactly under the description above, information about these costs must be submitted to the Joint Secretariat, and the eligibility will be consulted with the Managing Authority, if necessary. After receiving positive feedback from Joint Secretariat it is allowed to insert these costs to the report.</p>
<b>DK</b>	<p>If there conferences and events which do not take place because of COVID19, but for which costs are incurred, are these costs eligible?</p>
<b>PL</b>	<p>Will managing authorities be able to consider eligible expenditure in ongoing projects if there is no objective possibility of implementing projects in accordance with the requirements of EU and national law, e.g. in accordance with the requirements of public procurement law or Regulation 1303?</p>
<b>LT</b>	<p>Is the expenditure for an activity eligible for funding, if it was abruptly due to unforeseeable circumstances and exceptional situations caused by the Coronavirus developments which are beyond the control of the beneficiary and the related costs could not have been avoided.</p> <p>Situation1: May costs incurred for the organization of the project activities (flight, accommodation, etc.) be compensated to the project promoters if the project participants refuse to enter the virus-spreading areas published on the website of the Ministry of Foreign Affairs of The Republic of Lithuania (e.g. until March 11th it was Italy, China, South Korea) or project participants cannot enter the Republic of Lithuania from these countries?</p> <p>Situation 2: Another case where the project promoter planned to organize activities in Lithuania that he wanted to bring scientists to, for example from Italy, but</p>

	cancelled the event, how the costs incurred by the promoter should be treated
<b>CZ</b>	<p>Will the following costs be eligible:</p> <p>other unforeseen costs related to the continuing activities of the projects (costs which were not planned in the budget of the projects) e.g. increasing some categories of the cost: internet connection, acquisition of relevant equipment (notebooks, mobile phones), cloud services, acquisition of protective equipment etc. purchased for example for home office purposes.</p> <p>cost of activities which cannot be realized e.g. educational activities (conferences, workshops, courses, and seminars), counselling and consultation services, schools' clubs e.g. many of the conferences, workshops, courses, seminars, meetings had to be cancelled following emergency measures. Beneficiaries deal with expenses such as advance rentals of premises, related travel expenses, cancellation fees, wage costs, printing materials, etc.</p>
<b>SK</b>	The extraordinary situation related to Covid-19 has caused that many originally planned expenditures could not be made. They include, not limited to, participation fees for fairs that have been cancelled, for air tickets for business trips that were not carried out, etc. Even despite the maximum effort of beneficiaries who tried to cancel such expenditures, they did not succeed in all cases. Is it possible to get those expenditures reimbursed?
<b>ES</b>	When, in the framework of a co-financed operation, the beneficiary had to incur and pay for actions that have been cancelled because of COVID 19, and the amounts cannot be recovered (i.e. the cost of travel), are these expenses eligible?
<b>ES</b>	When, in the framework of a co-financed operation, the beneficiary has incurred in non-recoverable expenses and the operation cannot finally be carried out as defined because of COVID 19 and cannot be postponed (such as participation in fairs that were cancelled or similar situations), are these expenses eligible?

#### Flexibility to adjust affected operations - General

See also the sections 'COVID-19 and force majeure' and 'eligibility of expenditure affected in operations' above.

Where the execution of contracts is impeded because of COVID-19, for example, due to unavailability of key staff or products or subcontracted works or services because of the impact of the COVID-19, which may be regarded as force majeure, national authorities should exercise their discretion in permitting substitute performance or delayed performance.

National authorities may thus consider adjusting operations (e.g. deliverables, time limit for execution, etc.) in accordance with their national rules where necessary and justified, in a way to minimise the impact of the force majeure on the programmes.

National authorities could also consider the possibility to select new operations (e.g. if, as a result of the impact of the COVID-19 outbreak, there is a need to interrupt or stop the implementation of operations or when it is expected that the beneficiaries will not achieve the outputs intended) in order to effectively use available resources and to achieve the

targets set for the programme. New or additional calls for proposals could be launched if necessary.

The same conditions for assessing eligibility under Union and national rules as those described in section 'eligibility of expenditure affected in operations' above apply to expenditure in relation to projects the implementation of which had started but will no longer be carried out. For example, under a possible force majeure claim, it would be necessary to demonstrate not only that rescheduling or substitute performance was impossible but also that an event was organized in a period when the cancellation due to COVID-19 was not foreseeable.

Furthermore, it should be recalled that any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable.

In line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: [...]

*"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."*

Taking into account the fact that the Coronavirus crisis may qualify as unforeseeable contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.

In addition, Art 72(1)(e) of Directive 2014/24/EU allows for non substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms. Article 72(1)(c) of the same Directive also allows for contract modifications without a new procurement procedure in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50 % of the value of the original contract or framework agreement.

In their actions related to addressing the specific circumstances due to the COVID-19 outbreak, national authorities should take into account the principles of proportionality, equal treatment, as well as transparency (i.e. necessary communication measures should be taken to properly inform beneficiaries).

Finally, regarding indicators, it should be recalled that according to paragraph 5 of Annex II of the CPR, *"[i]n duly justified cases, such as a significant change in the economic, environmental and labour market conditions in a Member State or region, and in addition to amendments resulting from changes in allocations for a given priority, that Member State may propose the revision of milestones and targets in accordance with Article 30."*

<b>LV</b>	<p>Clear rules are needed on how to deal with slowing down projects due to health crises force majeure, for example, eligibility conditions, extension of expenditure period, extension of project deadlines, and provision of actions identified during the monitoring period, achievement of indicators. Guidance is needed on eligibility of expenditure already incurred in the projects affected by the crisis, including clarifications on cases when a project will have to be suspended or will not be implemented in full.</p>
<b>SI-HU ETC</b>	<p>We are now facing the issues how to advise projects in a way how to continue project implementations. Most of the projects have had big events planned and this will not happen any time soon. Also the question is if people will attend if they in reality do the events in the near future is a question.</p>
<b>SI-HU ETC</b>	<p>What happens with programme indicators, a lot of them won't be reached, because inability to finish on time? We have troubles deciding, because there are so many different aspects to consider case by case and we always have audit authority in mind (how will they respond, since even in normal times they were un-normal)!? Do you have any ideas how to approach those questions?</p>
<b>DE-CZ ETC</b>	<p>The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the <u>project</u> implementation due to the closure of the internal EU borders and/or local organisations involved in the project implementation (see below). How to proceed</p> <p style="padding-left: 40px;">If, for the reasons set out above, project activities have to be cancelled without being replaced and, as a result, project objectives cannot be fully achieved?</p> <p style="padding-left: 40px;">If, as a result, projects 'die' in the implementation phase because the initial conditions are no longer in place?</p>
<b>UK</b>	<p>Where contracts have been delayed, is there the possibility of increased flexibility for the Managing Authority to alter/extend contracts to ensure aims and targets can be met?</p>
<b>CY</b>	<p>Can we terminate ongoing projects? Which projects?</p>
<b>UK</b>	<p>In practical terms, how would the Managing Authority, implement the 'force majeure' option should, as looks increasingly likely, delivery of activity cease? Also, has there been a precedent for this in the past and what is the process for informing LP's and all stakeholders?</p>
<b>BG</b>	<p>More clarification is needed on the way the force majeure circumstances are to be applied on projects that have already started its implementation but could not finish it because of the crisis?</p>
<b>CZ</b>	<p>Extension of project realization even beyond the limit set in calls. Most projects of</p>

	OP RDE will be affected by the COVID-19 crisis, most of them might need to extend the realization phase (not only because of limited activities performed by the beneficiary, but also because of very limited services and activities performed by necessary partners, subcontractors, service providers, public sector etc.).
<b>SI</b>	Due to the impact of the coronavirus, delivery time of services and works are prolonged, equipment, services and works prices rise, and so on. Is it necessary to change the operation to make it feasible in the new framework? Is it possible, in order to achieve the planned goals and objectives, to co-finance an operation that changes in planned activities, equipment prices, implementation prices, ... because of coronavirus impact?
<b>SK</b>	In a large number of projects, it is not possible now to complete implementation of activities until originally set deadlines. Thus, they are getting into delays and fail to meet deadlines for completion of activities (deadlines were specified in calls). Is it possible to postpone such deadlines even beyond the limits set in the calls?

Amendments to existing projects - extension of scope to include COVID-19-related activities

National authorities may consider to adjust operations in accordance with their national rules if necessary and justified, taking into account the need to ensure the compliance with relevant EU rules, including provisions on selection of operations as laid down in Article 125(3) of CPR and the scope of support from the ERDF as laid down in Article 3 of ERDF Regulation (as modified by regulation (EU) 2020/460).

In particular, if the specific contractual obligations in the relevant grant agreements allow so, managing authorities may consider to adjust the scope of the existing operations falling within the health specialisation area identified by the S3 strategy, together with the increase of the available budget and the adjustment of their implementation timetable. Such modifications would not impair the research activities already initiated and would avoid the need to launch new calls for proposals.

If nevertheless contractual obligations do not allow for such modifications, it may be necessary to launch new calls for proposals. It should be recalled notably that any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable.

<b>HR</b>	Can health workers/researchers who are being paid from ERDF in the frame of a Smart specialisation project on health, but have been now moved to working on COVID research, still be paid from ERDF under the same operation (other health fields) or do they have to launch new tenders and new operations and move those researchers there for them to still be eligible? The existing S3 projects would be put on hold for now and the researchers would continue working on them after the pandemic is dealt with as to ensure achievement of set results of the programme.
<b>SI</b>	Part of the health or other personnel, recruited as part of the ongoing operation, is temporary reassigned to work on the fight against the coronavirus. These new activities are not linked to the original operation and do not contribute to the indicators of operation and OP. Can such operation be modified and could fight against the coronavirus, work of health personnel be also incorporated as eligible for ESI co-financing within the existing operation? Or only new operation, dealing with

	Covid-19 issues, should be prepared?
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Extension of programming period

The legislative framework for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. Consequently, the programming period laid down in Article 26(1) CPR and eligibility rules set out in Article 65(2) CPR apply and no extension of the programming period is planned.

<b>UK</b>	Where activity is significantly delayed or ceased, has consideration been given to extending the programme?
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<b>PL</b>	Does the EC presume any extensions of all applicable deadlines?
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Lighter selection of operations and procurement? (UPDATED)

***This reply has been updated on 4 May 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

First, it should be recalled that the legislative framework ([i.e. the CPR and in the Fund-specific rules](#)) for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. [For example, the roles and responsibilities of the monitoring committee remain unchanged. In accordance with Article 110\(2\)\(a\) CPR, the monitoring committee has to approve the selection methodology and criteria.](#) National authorities may select new operations in accordance with their national rules, taking into account the need to ensure compliance with relevant EU rules, including provisions on selection of operations as laid down in ~~Articles 65(6)~~ and 125(3) CPR, [including ensuring that the selection criteria are non-discriminatory and transparent.](#)

These provisions already provide for flexibility. For instance in line with national rules, selection criteria can be fixed by written consultation of the monitoring committee, it is possible to allow for a non-competitive selection procedure [and the beneficiary can be provided with an electronic version of the document fixing the conditions of support. In addition, Article 25a\(7\) CPR as introduced by the Regulation \(EU\) 2020/558 makes it possible to select an operation fostering crisis response capacities in the context of the COVID-19 outbreak](#) that before the submission of an application for funding to the Managing Authority, is already physically completed or fully implemented (provided that the applicable law relevant for the operation has been complied with). [This is possible as this provision sets out that Article 65\(6\) CPR does not apply in these cases. Article 25a\(7\) CPR also allows for selection of such operations even when they are not covered by the current programme, i.e. before the approval of the programme amendment by the Commission](#) (as this provision introduces a derogation to Article 125(3)(b) CPR). The beneficiary can be provided with an electronic version of the document fixing the conditions of support.

Concerning the public procurement rules, in line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:

*"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The*



*circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."*

Taking into account the fact that the Coronavirus crisis qualifies as unforeseeable/unpredictable, contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Coronavirus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive. In 2015, the Commission adopted a Communication "On Public Procurement rules in connection with the asylum crisis". Even if this Communication was targeting the specific situation related to the asylum crisis, it explains the full set of different possibilities available to the contracting authorities under the EU law to tackle efficiently the different urgency situations. For example, it explains in detail when swiftest negotiated procedure without publication can be used.

Beyond this, the Commission's services are ready to provide help and assistance to the Member States' authorities. The Commission has at present no plans to propose further changes to the EU Regulations relevant for the implementation of operational programmes or the public procurement directives.

<b>UK</b>	Is there likely to be any scope for a lighter touch on selection of operations and/or procurement or selecting recipients? (i.e. if a new operation is required, is there the option to simplify the process for assessment, and then the option for the operation to simplify processes begin delivery?)
<b>BE</b>	If new operations need to be decided, how can the managing authority meet its obligations? (launch of open calls for projects with wide dissemination, compliance with non-discriminatory and transparent selection criteria, establishment of an expert committee, etc.)
<b>BE</b>	What about the transition of the selection criteria to the monitoring committee?

#### Application of Article 70 CPR

Conditions set under Article 70 CPR have to be fully respected: operations supported by the ESI Funds shall be located in the programme area. Only operations concerning the provision of services to citizens or businesses which cover the whole territory of a Member State are considered as being located in all programme areas within a Member State. In such cases, expenditure shall be allocated to the concerned programme areas on a pro-rata basis, based on objective criteria.

Moreover, as far as operations implemented outside the programme area are concerned, all 4 conditions set under Article 70(2) must be respected: the operation is for the benefit of the programme area; the total amount from the ERDF, Cohesion Fund, EAFRD or EMFF allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the funds at the level of the priority at the time of adoption of the programme; the monitoring committee has given its agreement; the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled.

In accordance with Article 70(1) CPR that allows for Fund-specific rules, the ESF Regulation at Article 13(2) contains a specific rule setting out that the ESF may support operations which take place outside the programme area, but within the Union, if 2 conditions are met: i.e. the operation has to be for the benefit of the programme area and the obligations related to management, control and audit have to be fulfilled. When the operation also has a benefit for the programme area in which it is implemented, the expenditure has to be allocated to those programme areas on a pro rata basis based on objective criteria.

Furthermore, specifically for the EAFRD, fund specific rules require support to be directed to rural areas. However, Member States may also finance operations in other types of area (i.e. urban) if they are clearly for the benefit of rural areas and when they are eligible under the respective Rural Development Programme.

<b>CZ</b>	Outside of the CRII remit - could it be considered to use Article 70 CPR and use part of the funds for operational financing also in Prague?
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Use of equipment from other operations

Equipment that was purchased as part of the operations supported by the ESI Funds, may be used to foster crisis response capacities in the context of the COVID-19 outbreak. In addition, expenditure related to the use of such equipment would be eligible as of 1 February 2020, in accordance with the derogation in Article 65(10) CPR introduced by the Regulation (EU) 2020/460. The treatment of such cases depends on whether the relevant operation is on-going or finalized and in the latter case, if it falls within the scope of the durability rules under Article 71 CPR or not.

When it concerns on-going operations, such use of the equipment may require adjusting the document setting out the conditions for support to the operation. National authorities may consider to adjust operations in accordance with their national rules if necessary and justified, taking into account the need to ensure the compliance with relevant EU rules, including provisions on selection of operations as laid down in Article 125(3) of CPR and, for the EAFRD, in Article 49 of Regulation 1305/2013, and, for the ERDF, the scope of support as laid down in Article 3 of ERDF Regulation (as modified by the Regulation (EU) 2020/460).

When it concerns operations that are finalized and the equipment is a **productive investment** (i.e. an investment in fixed capital or immaterial assets of the enterprise benefiting from the grant, which are to be used for the production of goods and services thereby contributing to gross capital formation and employment), the managing authority should satisfy itself that such use of the equipment does not result in an incompliance with the durability requirements, as set out in Article 71(1) CPR. Mainly it could be the case falling under point (c) of Article 71(1) CPR, concerning a substantial change in the nature, objectives or implementing conditions of an operation. It should be decided at the national level, whether the change is substantial<sup>[1]</sup>. This should be checked against the conditions set out in the document setting out the conditions for support to the operation. If the new intended use of equipment does not undermine the original objective of the operation, the conditions may be satisfied.

When it concerns operations that were finalized but do not fall under the scope of Article 71 CPR, the equipment may be used to foster crisis response capacities in the context of the COVID-19 outbreak in accordance with national eligibility rules, also taking into account specific rules that are laid down in, or on the basis of, the CPR or the Fund-specific rules.

[1] Judgement of the Court of 14 November 2013 in case C-388/12

Is use of equipment acquired from projects' budget possible?

**CZ**

ERDF equipment that is acquired from the projects' budgets to provide research or educational activities e.g. microscopes, training medical equipment and other relevant etc. – can it be used to confront the current epidemiological situation? MA welcomes the initiative of the beneficiaries to help in such times, not to mention that it is not possible to block the usage of equipment in case of emergency.

Use of simplified costs options

All simplified costs options provided by the CPR could be used to provide support in the form of grants and repayable assistance to beneficiaries and the Commission strongly encourages Member States to make good use of them whenever possible.

In particular, for SME support operations under *de minimis* rules, which are not implemented exclusively through the public procurement of works, goods or services, in line with Article 67(4) CPR, as a general rule, any operation which receives support from the ERDF and the ESF, grants and repayable assistance for which the public support does not exceed EUR 100 000 should take the form of standard scales of unit costs, lump sums or flat rates.

In the context of the ESF, the Commission has already requested managing authorities to put in place specific measures, more specifically in the area of distance learning and health measures to combat the COVID-19 crisis. The managing authorities are recommended to make maximum use of the simplified cost options in place under Article 14(1) of the ESF Regulation ([Commission Delegated Regulation \(EU\) No 2015/2195](#)), but it may occur that additional unit costs or lump sums need to be established, for instance in the area of setting up provisional (mobile or fixed) health care facilities. This could be done on the basis of a draft budget (Art. 67(5)(aa) CPR) established on a case-by-case basis and agreed ex ante by the managing authority if the public support does not exceed EUR 100 000. Managing authorities are encouraged to start implementing these measures without delay. The Commission would also welcome a collaborative approach from the audit authorities and support to the Managing authority by assessing these SCO-schemes ex-ante. As usual, DG EMPL audit teams stand ready to assist you should it be needed.

**PL**

Are you considering the wider use of **rates / lump sums** at project implementation level (definition of rates / amounts at national / EU level) to improve project implementation?

Visibility rules

The aim of the Commission's proposal for the Coronavirus Response Investment Initiative aims at mobilising EU support as quickly as possible. However, the legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. Therefore, EU support should be duly acknowledged and communicated to the public as soon as it is possible and in compliance with the relevant EU rules.

The responsibilities of managing authorities and beneficiaries as regards information, communication and visibility of support from the Funds remain unchanged. At the same time, Annex XII CPR provides some flexibility as regards the timing of compliance with these obligations. For example, it refers in several cases to a period "during implementation of an operation". Additionally, point 2.2.5 of Annex XII sets out a requirement on some types of operations that no later than three months after completion of an operation, the

beneficiary shall put a permanent plaque or billboard acknowledging support from the Funds.

In case it is found that any of these requirements has not been adhered to, it would be expected from the managing authority to take the necessary corrective measures, i.e. if the beneficiary was not notified about the ESI Funds support, the managing authority should notify the beneficiary about the source of funding as soon as possible.

For the EAFRD, the provisions regarding responsibilities of managing authorities and beneficiaries as regards information and publicity laid down in Annex XIII of Regulation 808/2014 also remain in place.

For the EMFF, Article 119 of Regulation 508/2014 applies.

<b>BG</b>	Is it possible to apply visibility rules more flexibly given the pressing time for reaction to the crisis?
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Purchase of medicines, testing and treatment facilities

In accordance with Article 65(1), eligibility of expenditure shall be defined in the national rules, except for some specific rules laid down in or on the basis of the Common Provisions Regulation and the Fund-specific rules. To provide support to the healthcare system to fight the COVID-19 outbreak, purchase of medicines may be supported under both, ERDF and ESF.

As regards ERDF, this would fall under the wording of the second investment priority under TO1 in Article 5(1)(b) ERDF Regulation, as amended by the Regulation (EU) 2020/460, i.e. "fostering investment necessary for strengthening the crisis response capacities in health services".

As regards ESF, this would fall under the fourth investment priority on access to services under TO9 in Article 3(b)(iv) ESF Regulation, as it contributes to enhancing access to health care services.

<b>BG</b>	In the joint letter of Commissioners Ferreira and Schmit to Member States on the CRII and EUSF support, it is stated that Structural Funds could provide extended support through the financing of medicines, testing and treatment facilities. We would like to receive more clarifications and specifications on the scope and from which Fund these could be financed, especially in terms of the eligible medicines to be purchased (at least, so far there is no widely acknowledged and certified medicine/treatment for COVID-19).
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Support within schemes pre-dating the crisis

Businesses can benefit from the additional measures under the amended Articles 3(1) and 5(1)(b) ERDF Regulation and the amended Article 37(4) CPR only if such support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Where possible, when this would make support more timely and more efficient, support could be provided through existing mechanisms, e.g.

- a new product within an already set-up financial instrument (if in line with applicable public procurement rules) – see reply "Ex ante assessment and need for programme amendments when working capital is added" on how to assess if an ex ante assessment is needed and how to prepare it without unnecessary burden;
- a new call by an already designated intermediate body in the case of grants.

A new selection procedure would usually allow to select in a more targeted and transparent way those applicants which are indeed affected by the coronavirus. It could also facilitate State aid compliance if the temporary framework is used, avoiding mixing two different regimes.

It is not excluded that in some cases it could be possible to focus on already existing beneficiaries, if in line with Article 125(3)(a)(ii) CPR, the managing authority is able to draw up and apply appropriate selection procedures and criteria that are non-discriminatory and transparent. Any limitation of access to funding to beneficiaries is permitted only when duly justified (i.e. necessary) taking into account the needs and the specific objectives to be achieved. As a general rule, limiting access to funding solely to applicants which participated and succeeded in the previous call, which had not been announced then, could be considered as going against principle of non-discrimination. However, this should be assessed on case by case basis in a broader context, taking into account e.g. availability of other public funds for the other potential beneficiaries. In principle, if other public funding is available for the others on similar terms, separate calls for proposals could be justified e.g. by the fact that existing beneficiaries already went through the necessary verifications. If such restrictive approach is attempted, it should be discussed appropriately in the context of monitoring committee in line with Article 110(2)(a) which would allow the Commission, which is participating in the work of the monitoring committee in an advisory capacity, to react in the specific context.

This is without prejudice to the possibility to revise current contracts with beneficiaries (including changing their payment and implementation schedule, updating scope etc.) in line with existing contractual provisions or general rules concerning *force majeure*, *flexibility to adjust affected operations* – see specific replies on this topic.

<b>BG</b>	Is it possible to support businesses within the measures and schemes planned so far or do the procedures need to be new and focused to support companies affected by coronavirus? How will the costs incurred in implementing these measures be checked, will there be separate intervention codes for them?
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Simplifying application procedures

The CPR provides a flexible framework for how such support could be implemented. In particular in the context of providing grants and repayable assistance:

- where the public support does not exceed EUR 100 000, e.g. if granted to SMEs under *de minimis* rules, in line with Article 67(2a) CPR, as a general rule (in case the MS did not make use of the transitional provisions under Article 152(7) CPR), the ERDF and ESF support should take the form of a simplified cost option (lump sum, standard scales of unit costs, or flat rates), which should minimise the burden for the SMEs receiving support. [Guidance on simplified costs options](#), including lump sums, is available also in Bulgarian;
- where the aid per undertaking is less than EUR 200 000, the Member State may decide, in line with Article 2(10)(a) CPR, that the beneficiary is not the body receiving the aid, but the body granting the aid: in such a model, the SMEs receive the support, but are not considered beneficiaries which could reduce the administrative burden.

A managing authority should choose the method which is the most appropriate given the current situation. Specific arrangements for evaluating applicants should be proportionate

and could be decided by managing authorities, focusing on verification that approved support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Consultation of the monitoring committee in line with Article 110(2)(a) CPR would allow the Commission, which participate in the work of the monitoring committee in an advisory capacity, to react in a specific context.

<b>BG</b>	Can we use direct forms for support, for example vouchers and simplified procedures for evaluating applicants, e.g. interviews?
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#### Declaration of State aid advances in payment claims

Article 131(4) CPR makes it possible to include a part of the advances paid to the beneficiary by the body granting the aid in the payment application. This is an exception to the general rule that the Commission reimburses only expenditure that was already incurred and paid. One of the conditions for including such advances is, in line with Article 131(4)(a) CPR, that those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or are covered by a facility provided as a guarantee by a public entity or by the Member State.

The legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances and this includes Article 131(4)(a) CPR. The concept of *force majeure* is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. Article 131(4) CPR provides for a derogation for advance payments applicable to operations constitutive of State aid does and not impose any obligation on the Member State or beneficiary. Therefore, the Member State or the beneficiary cannot claim in this context the impossibility to comply with an obligation due to *force majeure* circumstances.

However, other tools, at the disposal of the Member States, could be used to address the issue, including in particular the following:

- Member States may use amounts not recovered in line with amended Article 139(7) CPR, to pre-finance the advances; the guarantees or another form of facility are required only if such advances are included in payment applications, but if the payment applications include only reimbursement of already incurred expenditure, as is the general rule already in the case of non-State aid projects, no guarantee is required;
- The guarantee or another facility could be provided by the Member State at reduced costs or without payment from the beneficiary, in compliance with the applicable State aid rules. The latter could notably require taking into account of the gross grant equivalent of such support under the applicable State aid rules, but would decrease the costs;

Costs related to such guarantees or other facilities could be made eligible under national eligibility rules.

<b>EE</b>	Can we derogate from the guarantee requirement in Article 131(4) CPR in the case of advances on State aid in case of force majeure, to mitigate the liquidity problems arising from the effects of force majeure and to reduce the cost of operations in such a difficult period when the guarantee requirement is disproportionate?
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#### Irregularities & financial corrections v. force majeure

As regards the concept of force majeure, that concept is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. In Union law, the notion of force majeure<sup>[1]</sup> generally presupposes circumstances, which: a) were beyond the control of the person claiming force majeure; b) were abnormal and unforeseeable, and c) whose consequences could not have been avoided despite the exercise of all due care. Where Union law refers to reasons of force majeure, all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated on a case-by-case basis. Force majeure may be conceived even more restrictively under national law.

There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as force majeure and thus constitute a valid justification for the incapacity to comply with an obligation. However, the outbreak is not necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak.

In doing this, national authorities should examine whether all due care has been exercised ie any measures potentially taken by beneficiaries to avoid, mitigate and minimise the consequences resulting from the event as regards the fulfilment of their obligations. National authorities have flexibility in demonstrating the exercise of due care in any appropriate way.

It is underlined that the legislative framework for the implementation of the ESI Funds programmes remains fully applicable even under the current exceptional circumstances. Where the legislative framework does not foresee derogations for reasons of force majeure it cannot be presumed from the outset that the circumstances resulting from the crisis justify a derogation from applicable Union law. No automatic recourse to the notion of force majeure can be made. The extent to which the fulfilment of the obligation stemming from Article 131(4), has been affected by the COVID 19 outbreak has to be assessed by the national authorities on case by case in line with the applicable legal framework. The same applies when assessing if the case in hand constitutes an irregularity in accordance with Article 2(36) CPR or when deciding on a financial correction on individual cases. As stated above, a careful assessment has to be carried out on cases by case basis in the light of the relevant circumstances and of the applicable legal framework, which remains fully applicable even under the current exceptional circumstances. This also concerns the rules on the setup and functioning of the management and control system, which remain an important safeguard for obtaining assurance on their functioning and on the legality and regularity of operations.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case 145/85 *Denkavit België* [1987] ECR 565, paragraph 11; Case C-377/03 *Commission v Belgium* [2006] ECR I-9733, paragraph 95; and Case C-218/09 *SGS Belgium and Others* [2010] ECR I-2373, paragraph 44

<b>PL</b>	In our opinion, all circumstances resulting from the COVID-19 outbreak can be qualified as abnormal (unusual) and unforeseeable and beyond the control of beneficiaries. What actions/exercises are required from beneficiaries during project implementation to avoid COVID-19 (the definition of 'due diligence' in terms of COVID-19)? Are any documents required (if yes, what kind of documents) to prove the fulfilment of 'due diligence'?
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In our opinion, any breach of Union law or of national law relating to its application, resulting from the COVID-19 outbreak (not from an act or omission by an economic operator involved in the implementation of the ESI Funds), which has, or would have the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union - does not mean 'irregularity'. Consequently, force majeure (COVID-19) is considered when deciding on financial corrections during projects implementation. Is it correct?

May the COVID-19 outbreak be considered as a case of force majeure justifying failure to meet the deadlines specified in art. 131.4 CPR - certified advances paid to the beneficiary by the body granting the aid ARE NOT covered by expenditure paid by the beneficiary WITHIN THREE YEARS of the year of the payment of the advance? if the answer is positive, does it apply to both advances paid before and after COVID-19 outbreak?

Body granting the aid as the beneficiary (Article 2(10)(a) CPR)

In order to comply with the cohesion policy rules and with a view to facilitate access for recipients of such support, the Member State may decide under ESIF rules that the beneficiary is the 'body granting the aid' in line with Article 2(10)(a) CPR. In such a model, the SMEs receive the support, but are not considered as beneficiaries within the meaning of CPR. This option is intended to reduce the administrative costs and burden to recipients of small grant amounts. Under this set-up all obligations which beneficiaries have under ESIF rules are applicable at the level of the body granting the aid. This will be expenditure of such bodies which is included in payment applications, provided that, in line with Article 131(3) CPR, the public contribution has been paid to the enterprise receiving the aid.

The ceiling laid down in Article 2(10)(a) CPR refers to the aid granted within this particular operation only, and does not exclude that the same company had received other aid outside of the operation, which cumulatively could exceed EUR 200 000, provided that applicable State aid rules are complied with.

The option pursuant to point (10)(a) of Article 2 CPR could be implemented under any State aid regime or for *de minimis* aid, including:

- the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak;
- the General Block Exemption Regulation;
- the *de minimis* Regulations (EU) No 1407/2013, (EU) No 1408/2013, and (EU) 717/2014).

The specific reference to the *de minimis* regulations in Article 2(10) CPR was included to clarify that the derogation applies also in the context of *de minimis* aid. *De minimis* aid is deemed not to meet all the constitutive conditions of Article 107(1) TFEU. However, for the purposes of application of CPR, the notion of State aid includes also *de minimis* aid.

Decision of Member States to make use of Article 2(10)(a) CPR is without prejudice to the **obligation by the managing authorities to ensure compliance with State aid rules at each level**: when the funds are transferred by the managing authority to the ESIF beneficiary, and when the ESIF beneficiary grants the aid to the SME.

Under State aid rules, SMEs receiving aid under such schemes are the recipients of the advantage from public sources, and therefore are considered as beneficiaries under the



State aid rules. Hence, while benefitting from simpler rules under the CPR, they need still to comply with requirements of the applicable State aid rules.

See specific replies on State aid to learn about the options available and applicable State aid requirements. See also replies concerning programme amendments in case programmes might need to be adjusted (e.g. in the section concerning principles of selection of operations or types of beneficiaries).

**PL** We would like to introduce within TO3 specific projects to support SMEs affected by the effects of a pandemic or enterprises involved in providing products / services necessary within fight against a pandemic. We think about introducing OPs an individual grant project, where the marshal would be a beneficiary, who could support such companies through grants up to the amounts resulting from *de minimis*. We think of a non-competitive model of implementation within individual project and with selection of companies from specific branches.

Would such scheme be compatible with the state aid rules?

Are retrospective operations eligible before submission of the amended programme?

Actions forming part of the response to the COVID-19 outbreak may be currently not covered by the programmes, e.g. as regards types of interventions or the main target groups or the indicators. It is as well possible that the Member State will have to amend its national eligibility rules in order to cover certain costs. Please consult the replies on the CRII Q&A website dedicated to the programme amendments under the tab “Structural Funds – horizontal questions”, under the “Programme amendments”. In particular, a reply “COVID-19 related programme amendments” may be useful.

Some actions fostering crisis response capacities in the context of the COVID-19 outbreak were quickly finalised, e.g. purchase of protective gear, medicines or medical equipment. They might have been physically completed or fully implemented before the beneficiary submitted application for funding. The first subparagraph of Article 25a(7) CPR introduced by [Regulation \(EU\) 2020/558](#) under the CRII Plus package sets out that Article 65(6) CPR does not apply for operations that foster crisis response capacities in the context of the COVID-19 outbreak. This means that these operations can be selected even when they have been fully implemented or physically completed before the beneficiary has submitted the application for funding to the managing authority. By way of derogation from Article 125(3)(b) CPR, the second subparagraph of Article 25a(7) CPR introduced by [Regulation \(EU\) 2020/558](#) under the CRII Plus package allows for selecting such operations for support under the ERDF or the ESF prior to the approval of the amended programme. Therefore, once these operations are selected (even when they are fully implemented or physically completed), the expenditure incurred by a beneficiary and paid as of 1 February 2020 is eligible for EU support, in accordance with Article 65(10) CPR as amended by [Regulation \(EU\) 2020/460](#) under the CRII package.

It should be noted that Article 65(10) CPR, as amended by [Regulation \(EU\) 2020/460](#), includes a derogation from Article 65(9) CPR, i.e. if these operations were not covered by the programme, the related expenditure is eligible as of 1 February 2020, and not from the date of submission to the Commission of the request for programme amendment or, in the event of application of Article 96(11) CPR, from the date of entry into force of the decision amending the programme.

Therefore, expenditure related to operations fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020, even if the relevant

request for programme amendment was submitted to the Commission after 1 February 2020.

<b>PT</b>	As regards Article 25a(7) CPR proposed in the CRII Plus, are those operations also eligible before the submission of the amended program, notably when new eligibility or typologies are created through that amendment?
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Durability of COVID-19 related operations (e.g. PPE, medical equipment)

In accordance with Article 71 CPR, requirements on the durability of operations continue to be applicable. From the limited information provided with the questions, it seems that they concern the provisions of Article 71(1) CPR that concerns operations comprising investment in **infrastructure** or **productive investment**. The managing authority should assess the investments on a case-by-case basis and decide whether the requirements of Article 71(1) CPR should apply.

It should be noted that, in the absence of a regulatory definition, according to an established interpretation a **productive investment** is understood as an investment in fixed capital or immaterial assets of the enterprise benefiting from the grant, which are to be used for the production of goods and services thereby contributing to gross capital formation and employment.

Masks or any other protective gear purchased as an investment necessary for strengthening the crisis response capacities in health services do not fall under productive investments, because they do not serve primarily the above aims, but they are used to suppress further spreading of the coronavirus, regardless if they are used in the hospital or in any other place.

Any other asset which may be considered to have been consumed during the course of the action in line with usual depreciation practices or which otherwise have no significant residual value, for example, in the case of an action having a certain duration, electronic equipment which becomes rapidly obsolete, would not fall under the durability rules.

However, medical devices purchased by an enterprise, e.g. ventilators, will be considered an equipment and may fall under the notion of a productive investment, because their primary objective is to deliver a service in the healthcare sector.

As regards **investments in infrastructure**, it covers a tangible property of permanent nature that meets the following conditions:

- It has an immobile nature (it is either permanently attached to the ground or to a property that is permanently attached to the ground and, in this case, it loses its identity through the incorporation and becomes a part of the immobile property to which it is attached).
- Under normal conditions of use, including reasonable care and maintenance, it has an unlimited life period.
- It retains its original shape and appearance with use.

In accordance with Article 71(1) CPR, the contribution shall be repaid when the operation is subject to any of the following:

- **A cessation or relocation of a productive activity outside of the programme area** – it seems that the question from Czechia may concern this point. If the productive activity is **temporarily** stopped due to the lockdown and it will be

resumed once the restrictions are sufficiently lessened, it will not be considered a “cessation”. Only if the activity would be permanently ended, it would undermine the original objectives of the operation and would fall under Article 71(1)(a) CPR. There is no need to extend the durability period to compensate for the temporary interruption of a productive activity, unless such an obligation is defined in the national rules.

- **A change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage** – this point does not seem to be applicable to any of the situations presented in the questions from Poland or Czechia.
- **A substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives** – please consult a reply “Use of equipment from other operations” for a detailed explanation.

**As regards the impact of force majeure** on meeting the requirements related to durability of operations, it should be noted that there may be instances in which circumstances resulting from the COVID-19 outbreak qualify as force majeure and thus constitute a valid justification for the incapacity to comply with an obligation. However, the outbreak is not necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations for reasons related to the COVID-19 outbreak. Therefore, it is necessary to assess every case individually in the light of the relevant circumstances and of the applicable legal framework, which remains fully applicable even under the current exceptional circumstances. Please consult the tab on “COVID-19 and Force Majeure” for further details.

<b>PL</b>	What about durability? In case the equipment is fully exploited during the COVID pandemic (masks etc) and it cannot be demonstrated that the beneficiaries of the equipment did not maintain the required durability.
<b>CZ</b>	<p>In case COVID-19 outbreak has affected the continuous performance of the obligation regarding the durability of operations set out in the Article 71 of CPR, what influence does it have on the durability period and what the consequences of not fulfilment of this obligation are? Should the durability period be interrupted for the time, in which the obligation is not fulfilled, or it has no influence on the course of the durability period?</p> <p>In case it is obvious that the condition set out in the Art. 71 could not be fulfilled during the whole durability period because of the direct effects caused by the COVID-19 outbreak on the affected operation, is that correct if no sanctions are applied, i.e. if this situation is not considered as the irregularity because we can qualify this situation as force majeure?</p>

## **Monitoring, reporting, performance framework (ongoing implementation and CRII)**

Performance Framework and Force Majeure

In accordance with the procedure laid down in Article 22(7) CPR, where the Commission, based on the final implementation report of the programme, establishes a serious failure to

achieve some targets due to clearly identified implementations weakness, it may consider whether to apply financial corrections in respect of the priorities concerned.

The third subparagraph of Article 22(7) CPR sets out that "financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned *or because of reasons of force majeure seriously affecting implementation of the priorities concerned.*"

Consequently, the Commission will consider in its assessment of whether financial correction is to be applied or, based on the above-referred provision, shall not be applied.

Nevertheless, all efforts should be made (e.g. by making use of the possibilities provided by the Commission's amendment proposals; adjustments to operations; reprogramming if necessary and possible, etc.) to ensure that programme targets are met. The Commission will cooperate with Member States to that end.

**UK** Has consideration been given to how 'force majeure' will be taken into consideration at the end of the programme for the performance framework?

**BE** With regard to the performance review, can the EC confirm that it will apply Article 22 (7) (3)? 'Financial corrections shall not be applied where the inability to achieve the targets results from the impact of socio-economic or environmental factors, significant changes in the economic and environmental conditions of the Member State concerned or for reasons of force majeure seriously impeding the implementation of the priorities concerned.'

Transfers to priorities that did not achieve their milestones

In order not to undermine the performance review exercise which took place based on Article 21 and 22 CPR in 2019, transfers of main allocations to underperforming priorities in the subsequent programme amendments was considered by the Commission as not recommendable for cohesion policy. In addition, and in the logic of rewarding performance, transfers of the performance reserve to the priorities that did not achieve their milestones is not allowed at all, due to the restriction laid down in Article 22(3) CPR that establishes that the performance reserve is allocated the reserve only to programmes and priorities which achieved their milestones[1].

In view of the current crisis following the COVID-19 outbreak, some new needs might be identified by the Member States, which could be covered by priorities underperforming at the time of the performance review. In that respect, in duly justified cases, where the priorities at stake have picked up the implementation pace in the last year and have sufficient potential to implement more resources than currently allocated to them, the Commission can accept a transfer of main allocation amounts to previously underperforming priorities. This is of course without prejudice to the applicable CPR requirements such as thematic concentration, limited transferability between categories of regions (Article 93(2) CPR), etc.

A possible reason for such transfer might be the Commission proposal COM(2020)113 to modify Regulation (EU) No 1301/2013 so that the ERDF investment priority to strengthen research, technological development and innovation can cover investment in products and services necessary for fostering the crisis response capacities in health services.

[1] This does not apply to the EAFRD, where the financing plan does not distinguish between amounts stemming from the performance reserve and main allocation.

<b>EE</b>	Is it possible to top up the innovation priority axis (TO1) even though it did not qualify for the performance reserve? So far the Commission has indicated that this is not possible.
<b>HR</b>	Possibility for reallocation to non-performing priorities

Indicators' targets in the context of crisis response (UPDATED)

***This reply has been updated on 29 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

*Disclaimer: This reply concerns ERDF, ESF and the Cohesion Fund only.*

The Commission proposal for the new Article 30(5) CPR [introduced by Regulation \(EU\) 2020/460 under the Coronavirus Response Investment Initiative](#) allows Member States to make financial transfers between priority axes of the same Fund within the same programme up to the indicated ceilings without the Commission's decision approving such programme amendments. However, such transfers should be approved by the monitoring committee in advance. They should not affect previous years and should comply with all regulatory requirements e.g. as regards thematic concentration<sup>[1]</sup>.

If these transfers have knock-on consequences on the other elements of the programme content (apart from those referred to above), then it is necessary to amend the programme accordingly. The Member State should then request for amendment of the programme and the Commission should approve the request in accordance with the programme amendment procedure as set out in Article 30(1) and (2) CPR.

The CPR provides some flexibility as regards the timing of introducing the necessary programme amendments. Such a programme modification may be launched at a later stage, when the full extent of the EU support to the effective response to the public health crisis becomes clearer. This will allow for taking into account all the consequences for the programmes in a comprehensive manner (e.g. types of actions, main target groups, types of beneficiaries, territories targeted, indicators and their targets, etc.).

Specifically as regards the indicators, Article 27(4) CPR requires that each priority shall set out indicators and corresponding targets in order to assess progress in programme implementation aimed at achievement of objectives. There is no obligation to ensure that all operations and their deliverables are covered in 100% by the indicators. As long as the indicators for the given specific objective allow for the progress assessment, this requirement is considered met.

In particular, as regards the output indicators included in the performance framework, Article 5 of the Implementing Regulation 215/2014 requires that they shall correspond to more than 50 % of the financial allocation to the priority. Article 4(2)(a) and (4) of the implementing regulation requires the bodies amending the programmes to record data or evidence used to estimate the targets. Point 5 of Annex II CPR clarifies that a Member State may propose a revision of the milestones and targets through a programme amendment in line with Article 30(1) and (2) CPR in duly justified cases, such as a significant change in the economic, environmental and labour market conditions, and when it is a consequence of changes in allocations for a given priority.

In accordance with the procedure laid down in Article 22(7) CPR, where the Commission, based on the final implementation report of the programme, establishes a serious failure to achieve some targets due to clearly identified implementations weakness, it may consider whether to apply financial corrections in respect of the priorities concerned.

The third subparagraph of Article 22(7) CPR sets out that “financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned or because of reasons of force majeure seriously affecting implementation of the priorities concerned.”

Consequently, the Commission will consider in its assessment whether financial correction is to be applied or, based on the above-referred provision, shall not be applied. The data or evidence used to estimate the value of the target will be essential in that assessment as it will show the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions or force majeure.

The Commission considers that the situation arising from the COVID-19 outbreak may give grounds to invoke ‘force majeure’, depending on how the situation has affected the implementation of the programme and priorities.

Nevertheless, all efforts should be made (e.g. by making use of the possibilities provided by the Commission’s amendment proposals, adjustments to operations, reprogramming if necessary and possible, etc.) to ensure that programme targets are met. The Commission will cooperate with Member States to that end.

In case of modifications to indicator values resulting from measures taken to address the current COVID-19 outbreak, Member States will need to provide the rationale for the adjustment in indicator targets, including the new indicator targets necessary to be established as a result of the measures taken, in line with Article 27(4) of the CPR and fund-specific rules.

[\[1\] As regards this deletion, in accordance with Article 25a\(5\) CPR that was introduced by Regulation \(EU\) 2020/558 under the Coronavirus Response Investment Initiative Plus, such transfers shall not be subject to the requirements on thematic concentration set out in the CPR or the Fund-specific Regulations.](#)

<p><b>EE</b></p>	<p>If funding is transferred between priority axes to boost TO1 for the purposes of tackling the corona virus, it will reduce allocations for other priorities and actions, which is likely to impact the achievement of the targets set for those other priorities at the end of the programming period. How will this be managed at closure, if there is no corresponding revision of the targets of the “donor” priorities? In case measures related to the corona virus outbreak are added to the OP, should there be output and result indicators with targets suggested or may this stay without such elements (as not all investments must have indicators)?</p>
<p><b>FR</b></p>	<p>Sur la facilité donnée à la révision, au-delà même du seuil de 8%, je comprends que nous pourrions transférer d’un axe à l’autre sans autorisation de la CE. Mais faudra-t-il, quand même, modifier nos indicateurs, notamment du cadre de performance? Ou bien, on modifie notre maquette et, si c’est en dessous du seuil, on ne touche pas au reste ?</p>

En tout état de cause, j'imagine qu'il faudra quand même faire valider par le comité de suivi

**BG**

Could Performance framework targets be reduced/amended in the OP due the force majeure situation with COVID and the slowdown of projects implementation?

**FR**

Les indicateurs financiers du cadre de performance sont calqués sur les montants de dépenses éligibles prévisionnels des différents axes prioritaires. Pour chaque axe, la valeur cible à atteindre en 2023 correspond au montant de la colonne « financement total » du plan de financement initial du PO (tableau 16). Si celui-ci est modifié dans le cadre de la procédure prévue par le nouvel article 30, paragraphe 5, est-ce que les valeurs cibles des indicateurs financiers du cadre de performance seront considérés d'office comme modifiés en conséquence ?

The financial indicators of the performance framework are modelled on the projected amounts of eligible expenditure for the various priority axes. For each axis, the target to be achieved in 2023 is the amount of the column "Total finance" of the OP's initial financing plan (Table 16). If the latter is modified in accordance with the procedure laid down in the new Article 30(5), will the target values of the financial indicators of the performance framework be considered of its own motion as amended accordingly?

Annual implementation report (AIR) 2019

From 2020 until 2023 (included), the managing authorities shall submit to the Commission only so called "light" annual implementation report, i.e. only Part A of AIR template (data required every year) should be filled in (see Article 50(2) of Regulation (EU) No 1303/2013). An optional Section 14.4 of Part B on the OP contribution to macro-regional strategies and sea basin can be filled in, where appropriate.

(See: Questions and Answers on AIR

[https://ec.europa.eu/regional\\_policy/en/information/legislation/guidance/](https://ec.europa.eu/regional_policy/en/information/legislation/guidance/) )

**HR**

Are any changes envisaged to the AIR 2019 template compared to the 2018 one?

Achievement of programme targets, values of indicators, co-financing rate

In accordance with point 5 of Annex II CPR on the method for establishing the performance framework, Member States may, in duly justified cases, such as a significant change in the economic, environmental and labour market conditions in a Member State or region and in addition to amendments resulting from changes in allocations for a given priority, propose the revision of milestones and targets for the indicators in the performance framework in accordance with Article 30 CPR.

There are therefore **2 situations** in which the values for indicators in the performance framework can be reviewed [1] :

- **in duly justified cases:** including if the significant change made it impossible to achieve a target, the Member State may propose the revision of targets. Based on the first estimations of the impact of the Coronavirus crisis on the European economy, it is expected that the condition for amending the targets in the

performance framework will be met. However, if the revision aims only to align targets with actual performance, this would not be regarded as a due justification.

- **In case there are changes in the budgetary allocation to a priority:** programme amendments changing the financial resources in a priority to address the current crisis will therefore also justify an amendment of the values for the targets.

For all indicators both in the PF and outside, in case of modifications to the target values for indicators or selection of new indicators resulting from measures taken to address the current COVID-19 outbreak, including within the context of the CPR amendment proposal, the Member State will need to provide the rationale (e.g. referring to the COVID-19 related crisis) for the adjustment of the target values for indicators or for the selection of new indicators and their related targets.

In accordance with Article 4(3) and (4) of Regulation (EU) No 215/2014, the information on the methodologies and criteria applied to select indicators for the performance framework and to fix corresponding milestones and targets recorded by the bodies preparing programmes has to be made available at the request of the Commission.

Concerning EU co-financing, the rates set out in Article 120(3) CPR apply. The Commission did not propose a change to the co-financing rates to avoid lowering the overall investment potential of the programmes.

[1] See also the Guidance for Member States on the performance framework, review and reserve.

<b>UK</b>	Will the Commission consider flexibility in relation to achievement of overall programme targets to reflect the unique circumstances we are in as well as a temporary relaxation in match funding requirements, at least during 2020?
<b>PL</b>	Will the EC services allow deviations from the values of indicators assumed in projects and programs?

#### Additional indicators and reporting on COVID-19 measure

Article 27(4) CPR requires that each priority shall set out indicators and corresponding targets in order to assess progress in programme implementation aimed at achievement of objectives. There is no obligation to ensure that all operations and their deliverables are covered in 100% by the indicators. As long as the indicators for the given specific objective allow for the progress assessment, this requirement is considered met.

The impact of including new types of operations that form a response to the COVID-19 outbreak, should be assessed on a case-by-case basis and depending on their scale and nature, it may be necessary to introduce new indicators or amend the targets of the current indicators. In case of modifications to indicator values resulting from measures taken to address the current COVID-19 outbreak, Member States will need to provide the rationale for the adjustment in indicator targets, including the new indicator targets necessary to be established as a result of the measures taken, in line with Article 27(4) of the CPR and fund-specific rules.

As regards the timing of such programme amendments, please consult the reply "COVID-19 related programme amendments" under the tab "Programme amendments".



As regards changes in indicators covered by the performance framework, please consult the reply "Indicators' targets in the context of crisis response" under the tab "Monitoring, reporting, performance framework".

The Commission did not propose any additional reporting obligations focused on the response to the COVID-19 outbreak. The information on these projects should be presented in the annual implementation reports just as it is the case for any other projects covered by the programme. Please note that Article 50(2) CPR requires that the annual implementation reports shall set out key information on implementation of the programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, as well as any issues that affect the performance of the programme and the measures taken. The consequences of the COVID-19 pandemic and the need to redirect the EU funds to address them, may affect the performance of the programme (e.g. due to redirection of the EU support to such projects) and they should be addressed in the annual implementation reports of 2020 (to be submitted in 2021).

<b>DE</b>	Is there a need for new indicators or indicator changes in order to finance new actions responding to the crisis? Or can indicator changes be rather dealt with later on? Is additional reporting necessary?
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Deadline for the AIR submission

The new Article 25a(9) CPR, derogates from the deadlines set out in the Fund-specific Regulations by postponing the deadline for submission of the annual report on implementation of the programme referred to in Article 50(1) CPR for the year 2019 to 30 September 2020 for all ESI Funds.

<b>HR</b>	Is there any indication at EU level regarding the deadlines for AIR submission considering all the steps that are now in question?
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Categories of intervention for COVID-19 related investments

The categories of intervention for the ERDF were not amended in the context of the CRII or CRII Plus legislative amendments. Therefore, the currently available categories should be applied, that are as close to supported investments as possible. Intervention field "053 Health infrastructure" covers equipment and services as well, therefore it broadly covers the type of actions listed in the question. In addition, code "081 ICT solutions addressing healthy, active ageing and e-health" may be relevant in case of all IT related actions.

<b>CY</b>	I have read your response to the question on "Categories of Intervention" (ERDF section) in the CRII Q&A platform, but I still don't find a relevant category for investments in "health equipment and medicines", "testing suspects for COVID-19", "provision of accommodation-quarantine to suspects and/or medical staff", "provision of protective equipment (such as respiratory masks, gloves and goggles)", "medical devices" or generally investments for disease prevention and restriction of its expansion.
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## **CRII - general**

Voluntary use of CRII

The "shall" in this context indicates that such expenditure (where it exists) is eligible from 1 February 2020. It does not mean that such expenditure is compulsory nor that remaining

ESI funds should be used for investments related to the ongoing emergency: it is up to the Member State to decide to make use of the extended eligibility under Article 1, and of the flexibility under Article 2 (1) and (2) of the CRII proposal.

However, amounts not recovered from the accounts submitted in 2020 are additional liquidity that shall be specifically used to accelerate investments related to the COVID-19 outbreak and are eligible under the CPR and Fund specific rules.

<b>BE</b>	For OPs that already have an earmarking rate (budget commitment) of 100 % of the funds, would there be an obligation to reallocate part of the commitment budget (to the detriment of existing projects) in order to take specific measures related to CRII in the framework of the OP with the additional liquidity that will be available in 2020
<b>DE</b>	Please confirm, that the use of the Coronavirus Response Investment Initiative is optional. The MS have no obligation to modify ERDF programmes.
<b>NL</b>	<p>Is it obligatory to use the remaining ESIF for COVID-19 related investment? Mr Koopman said in the Taskforce call it is voluntary, but the regulation says 'shall'. Please clarify</p> <p><i>[ In Article 65(10), the following subparagraph is added:</i></p> <p><i>"By way of derogation from paragraph (9), expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020." ]</i></p>
<b>FR</b>	La CE propose d'intégrer les investissements en matière de santé dans l'OT 1b pour les PO qui n'ont pas mobilisé l'OT 9. Est-ce que l'Autorité de gestion a le choix entre l'OT 1b et l'OT 9? Les PO Aquitaine et Limousin ont l'OT 9 prévu dans le PO, est-ce que cela veut dire que l'AG doit obligatoirement mobiliser l'OT 9?

Timeframe for implementation of projects under CRII

The legislative framework for the implementation of operational programmes remains fully applicable. Consequently, eligibility rules set in Article 65(2) CPR apply and therefore the final date of eligibility is 31.12.2023.

<b>PL</b>	What will be the timeframe for implementation of projects by hospitals related to COVID-19 crisis? Also 31.12.2023?
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Are resources from CRII additional?

These resources are not additional to the Member States' envelopes. However, the Commission will not issue a recovery order where there would be an amount recoverable from the Member State following the acceptance of accounts submitted in 2020. In this way, the Commission is providing a quick liquidity injection to accelerate investments related to the COVID-19 outbreak.

<b>NL</b>	Can we speak of additional resources from the EU budget or does the initiative only consist of existing resources stemming from the Member States' programming envelopes?
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Unspent pre-financing: does the CRII imply a change in co-financing rates?

The Regulation (EU) No 460/2020 (CRII) does not entail changes to the existing co-financing rates, meaning that programmes will still have the agreed national co-financing rate. The Commission will continue to reimburse the payment claims in line with the co-financing percentages agreed in each operational programme. The amounts not recovered in 2020 will be cleared or recovered at the closure of programmes, on the basis of the eligible expenditure declared to the Commission.

<b>NL</b>	How does it work precisely; using this unrecovered prefinancing as national resources without changing European cofinancing percentages? Does this mean that we have to correct for this when closing the programmes in say 2025?
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Clarifications on calculations for amounts to be released as liquidity

The calculation of the amounts recoverable from Member States ('amounts to be released as liquidity') refers to all ESI Funds concerned by the CRII (ERDF, CF, ESF & YEI, EMFF).

The breakdown per Member State depends solely on the expenditure declared by Member States in their accounts for accounting year 01/07/2018 – 30/06/2019. The amounts are calculated in accordance with the formula indicated in Article 139(6) of the CPR.

The amounts to be released as liquidity represent the "net effect" of the clearance of the accounts at Member State level. It means that for one fund we might have a potential recovery but for another the Commission might need to pay (if the expenditure declared in the accounts is higher than the payments made by the Commission for the given accounting year).

Please note the provisional character of the figures used at the moment of calculation and adoption of the CRII proposal. The amounts are still indicative given that the examination and acceptance of accounts process is ongoing, they will be confirmed in the decision following the acceptance of the accounts.

<b>DE</b>	How was the unspent pre-financing made available under the CRII calculated?
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Crisis-related support for SMEs outside of the amended scope

The additional possibilities provided by the amended Articles 3(1) and 5(1)(b) ERDF Regulation and the amended Article 37(4) CPR do not preclude financing other crisis-related actions which are already eligible under ERDF rules.

Please note that the extension, which makes it possible to **finance working capital**, is already quite broad and, as a general rule, should cover the needs identified by the SME sector. Support for working capital can be provided in the form of grants, repayable assistance or financial instruments if the recipient of such support is an SME and if such support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Support to short-time work schemes is eligible under the ESF (and covered by section 3.10 of the amended Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak).

Working capital could be understood as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14\\_0041-1](#)). This includes also costs such as cleaning of spaces, protective measures and adaptation of workplaces. Equipment which is necessary to provide an effective response to a public

health crisis and is expected to be mostly depreciated over the period of the health crisis and its aftermath could also be included.

If the support fits into the scope of the **priority axis** under the current version of the OP, there would not be any need to modify the OP, but this needs to be verified in each specific case, as programme-specific conditions might require extending the scope of support in order to cover such new types of actions. Neither working capital nor the specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible under the current programme (either from 1 January 2014 or from the date of submission of the programme amendment request in the cases covered by Article 65(9) CPR).

In case the programme needs to be amended to extend eligibility to cover the working capital or another new scope, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible **as of 1 February 2020. This also applies to working capital granted to SMEs to provide an effective response to the public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.

<b>BG</b>	Is it possible to provide funding for other crisis-related actions that are not specified in the proposed modifications of ERDF and CPR Regulations but could be identified by the SME sector?
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Applicability to ETC, IPA, ENI

**As regards Regulation (EU) 2020/460 of 30 March 2020 (CRII):**

All introduced amendments to CPR and ERDF/Cohesion Fund Regulations apply also to Interreg.

It is confirmed that new Article 30(5) CPR also applies to Interreg programmes.

With the exception of the amendments introduced in Article 30 (5) CPR, these amendments also apply to IPA-CBC, based on general (e.g. Article 33) and specific (e.g. Article 46) cross-references in Regulation 447/2014. However, none of the modifications applies to ENI-CBC. The Commission services are currently preparing specific acts to make all modifications also apply to IPA-CBC and ENI-CBC.

It is also confirmed that the amendment to Article 65(10) CPR (new subparagraph) applies directly to ETC and also - by interpretation of Article 43(4) of Regulation 447/2014 - to IPA-CBC.

**As regards Article 25a of proposal COM (2020) 138 and and 120(3) CPR:**

Paragraph (1) derogates from Article 60(1) and 120(3)(4<sup>th</sup> subparagraph) CPR, the latter setting the maximum co-financing rate for the ETC as well. Therefore, 100% EU co-financing to expenditure declared in payment applications during the accounting year starting on 1 July 2020 and ending on 30 June 2021 is possible also for ETC, with the exclusion of external cooperation programmes, i.e. ENI and IPA cross-border cooperation programmes.

Paragraphs (2), (3) and (4): ETC, IPA-CBC and ENI-CBC are not affected by any transfers between funds or between regions as the proposal does not derogate from Article 94 CPR establishing non-transferability of resources between goals. This is moreover clearly stated in Recital 5 of the COM proposal.

Derogation to requirements on thematic concentration at paragraph (5) apply to ETC, as well as derogation at paragraph (7), allowing for selection of operations fostering crisis response capacities in the context of the COVID-19 outbreak that were completed or fully implemented before applying for support, and allowing for these operations to be selected before the programme amendment is approved. All of that concerns of course the operations related to the anti-COVID-19 response. Both paragraphs also apply to IPA-CBC.

The discontinuing of amendments to Partnership agreement and of its consistency with programmes at paragraph (6) applies to all programmes falling within it. The paragraph is not relevant for ETC, even less for IPA-CBC and ENI-CBC.

The extension of the deadline for submission of annual implementation reports for the year 2019 to 30 September 2020 at paragraph (9) applies to all programmes including ETC and IPA-CBC, as well as paragraphs (8), (10), (11) and (12).

The flexibility introduced in Article 25a (12) CPR at the closure of the last accounting year also applies to ETC and (via Article 46(2) of Reg 447/2014) to IPA-CBC.

The Commission services are currently preparing a specific act to make Article 25 a (1) also apply to IPA-CBC and all relevant CPR amendments also apply to ENI-CBC.

<b>IT</b>	Could you make clear which are the changes to Regulation 1301/2013 and 1303/2013 introduced by Regulation 460/2020 and proposed by the COM(2020) 138 final - beyond the non-relevant ones and the non-applicability explicitly mentioned in the COM(2020) 138 regarding transfers (new (Article 25a(2)) of Regulation 1303/2013) - not applying to the ETC Objective nor to ENI programmes?
<b>NL</b>	It is not fully clear whether there are provisions under CRII (+) applicable to Interreg. Since there are no adjustments in ETC regulation and in CRII+ it explicitly states that resources under the ETC goal are excluded by the more flexible transfer options, we conclude that Interreg is excluded from CRII (+). If this is not the case and some provisions are applicable, could you please tell us which ones?

#### Scope of crisis support under cohesion policy

In accordance with [the Regulation \(EU\) 2020/460](#) that introduced additional derogation in Article 65(10) CPR, all expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020.

That Regulation also amended an ERDF investment priority under Article 5(1)(b) ERDF Regulation which now covers investments necessary for strengthening the crisis response capacities in public health services. This would encompass any operation that ensures an effective response to a public health crisis in the context of the COVID-19 outbreak. Support to the healthcare system includes, but is not limited to, investments in financing health equipment and medicines, testing and treatment facilities, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), medical devices, to adapt working environment in the health care sector and to ensure access to health care provided this support falls within the scope defined in Article 3(1) ERDF Regulation.

In addition, as regards the extended investment priority under TO1 in Article 5(1)(b) ERDF Regulation, fostering investments necessary for strengthening the crisis response capacities in health services, may cover any company. Such actions do not fall under productive

investments as explained in the reply under the ERDF tab on “Support to companies in the health sector”.

It is possible to mobilise resources to address the public health crisis also within the existing scope of support of several thematic objectives under the ERDF, for example:

1. Under TO1, in addition to the proposed support fostering the crisis response capacities in health services, the ERDF may as well support coordinated research and innovation in healthcare, based on smart specialisation strategies.
2. Under TO2, the ERDF can support a wide range of e-health solutions.
3. Under TO3, the ERDF can support working capital in SMEs where necessary as a temporary measure to provide an effective response to a public health crisis related to the COVID-19 outbreak. Furthermore, the new scope of support proposed under Article 3(1) ERDF Regulation is not limited to TO3, but can be used under any other TO where SMEs are supported, as set out in the operational programme. In the context of the support to SMEs, it should be noted that under the CRII Plus, the ERDF Regulation was amended by [Regulation \(EU\) 2020/558](#) in order align the support for undertakings in difficulty with the approach taken under the Temporary Framework for State Aid Measures to support the economy in the current COVID-19 outbreak and with rules for the granting of de minimis aid.
4. Under TO5, the ERDF can support investments to address specific risks, ensuring disaster resilience and developing disaster management systems (mostly ICT, which is also eligible under TO2). Preparedness in the form of support for equipment, infrastructure and training for response units is crucial. Such support **could include** investment in infrastructure (detection, early warning and alert systems) and acquisition of the needed studies, report, scientific data and knowledge to set up health-crisis related strategies, plans and programmes. It can also support information dissemination, capacity building of relevant stakeholders as well as health equipment and medical devices that are necessary for emergency response.
5. Under TO9, the first investment priority under the ERDF already covers investment in health and social infrastructure, which contributes to national, regional and local development, reducing inequalities in terms of health status. It may include a wide range of investments in supporting an effective response to the public health crisis resulting from the COVID-19 outbreak, g. investments in financing health equipment (such as ventilators), testing and treatment facilities, diagnostic laboratories and tests, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), mobile health services, medical devices, adapting the working environment in the health care sector and ensuring access to health care for vulnerable groups. As regards medicines, please see a specific reply “Purchase of medicines, testing and treatment facilities” under the “Structural Funds – horizontal questions” tab. All investments should respond to identified needs at every level of healthcare, such as hospitals, primary care and ambulatory care.

TO9 may also cover the protective gear for the staff and volunteers in delivering non-medical essential services to the citizens, as in the current high level of health risk, this gear is necessary for an effective and secure delivery of these services.

1. Under TO10, the ERDF can support reinforcement of training infrastructure required for skill development of medical providers as a response to the current crisis.
2. Under TO11, the ERDF and the CF may provide support related to the implementation of the ERDF and CF support responding to the current crisis. The

ERDF may as well strengthen institutional capacity and the efficiency of public administration where such support is provided by ESF in this regard.

As regards the ESF support, the ESF can provide ample support to address the COVID-19 crisis.

For instance, under thematic objective 9 (social inclusion), the investment priority set out in Article 3(b)(iv) ESF Regulation, that aims at enhancing access to services, including health care services, provides wide investment possibilities, notably to reinforce the capacity of these services to respond to this crisis, e.g:

- purchasing the necessary healthcare equipment, including protective equipment for health care workers;
- support to the provision of the healthcare services linked to the COVID-19 outbreak;
- recruiting additional staff for more and extended healthcare services;
- temporary wage support for staff recruited for controlling borders and other officials in charge of containing the spread of the virus;
- public communication and information.

In addition, the ESF may also be used to support the purchase of protective gear for public services, including, for instance staff or volunteers in delivering social assistance such as distribution of food aid to the most deprived as in the current high level of health risk, this gear is necessary for an effective and secure delivery of such services. Although these actions may be supported by the Fund for the European Aid to the Most Deprived, either under technical assistance, or according to the Commission proposal amending the FEAD Regulation (COM(2020) 141), outside technical assistance, together with the costs for purchasing food, given the limited amount of resources available under the FEAD, they may be also supported by the ESF.

Moreover, in order to ensure access to healthcare services that are effective and resilient, the ESF may support actions that limit social contacts in order to delay the spread of the coronavirus and avoid overloading the healthcare system, e.g.:

- short-time work schemes for workers in sectors directly affected by the public health ban to congregate (notably the hospitality sector- e.g. bars, restaurants, shops, etc.), but also for staff in aviation given the numerous restrictions to travel for the same reason;
- allowances for parents who can't work as they have to take care of their children whose schools closed;
- allowances for trainers whose trainings have been suspended, etc.

Under thematic objective 8 (employment), the ESF can also support short-time work schemes to maintain employment in sectors not directly at the forefront of combating the spread of the virus, but undergoing side-effects: e.g. suffering delays in delivery of supplies or facing a drop in demand (for more information see the Q&A on short-time work schemes). Moreover, the ESF can also support the development of new forms of working arrangements, including telework and other flexible work arrangements.

More information can be found in the 'Typology of indicative measures under the ESF and the YEI that can be mobilised to address the COVID-19 crisis'.

The ESF may also provide support to actions addressing the socio-economic consequences of the COVID-19 outbreak. In particular, the ESF may support workers and self-employed persons who became unemployed by assisting in their reintegration in the labour market through lessons learned from this crisis by anticipating skills needs and contributing to tailor-made assistance and support in matching supply and demand in the labour market, transitional measures and mobility, as to ensure a swift recovery of the economy. As public employment services and other organisations involved in reactivation schemes will be faced with considerably higher demand for their services. ESF support can be channelled to the capacity building and modernisation of such services. These may include not only measures to expand their capacities (number of case handlers), but also actions to improve their efficiency (e.g. training of personnel and trainers, development of innovative services, reorganisation, etc.). The ESF could intervene in supporting sectoral networks between companies and social partners (i.e. joint actions) that can help foresee and manage change in an integrated manner and to support business networks and consulting for change management. Consulting services, plans for change in management, specialised training and other supportive services are examples of possible ESF intervention. Moreover, as this crisis is a health related crisis, the ESF can support the implementation of new insights regarding health and safety measures to prevent the outbreak of a similar crisis.

It should be noted that while the thematic objectives, investment priorities and the scope of support are defined in the CPR and in the Fund-specific rules, the scope of support that can be provided by the Funds is further defined in the programmes. In addition, in accordance with Article 65(1) CPR, "[t]he eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules."

<b>SI</b>	In line with the proposed modification of the CPR, do potential new operations have to be linked only to an area of research and development under thematic objective 1 and an area of extension of eligibility for working capital under thematic objective 3? Or is there a room to address current challenges in other thematic objectives with all three funds (ESF, ERDF and CF)?
<b>SI</b>	Is eligibility of the new Covid-19 related, new operations/projects meant in the widest possible sense (everything related to measures against Covid-19 in member state can be eligible under the cohesion policy rules) i.e. services, purchase of equipment, works?
<b>FR</b>	Sur les dépenses éligibles : pourriez-vous confirmer que les dépenses de fonctionnement des hôpitaux comme les achats de masques, de petit matériel et surtout des dépenses salariales des renforts en personnels soignants et des heures supplémentaires de personnels sont bien éligibles depuis le début de la crise?
<b>FR</b>	Autre question pour confirmer ce que nous comprenons des textes : les équipements comme les masques ou autres, sont éligibles s'ils sont à destination des secteurs de la santé. C'est bien ça ?  Car on a des demandes aussi de collectivités concernant des masques pour leurs



	agents. Hors du secteur de la santé, c'est négatif ?
<b>LT</b>	Concerning COVID-19 outbreak crisis, we would like to know your opinion if costs of personal protective equipment such as FFP3/FFP2 respirator masks, gloves, goggles are eligible to finance by ERDF under TO9?

Support to large enterprises as a response to COVID-19 outbreak

As regards support from Cohesion Policy to non-SME enterprises as part of a response to COVID-19 outbreak, there are several possibilities. Please consult the following replies on the CRII Q&A website for further details:

1. "Support to companies in the health sector" under the ERDF tab, which described when non-SME companies, e.g. hospitals, can receive support from ERDF to foster investment necessary for strengthening the crisis response capacities in health services under the investment priority 1(b) of thematic objective 1, as extended by the Regulation (EU) 2020/460.
2. "Financial instrument support to large enterprises, including mid-caps" under the Structural Funds tab, where information as regards support for working capital for the non-SMEs is presented.
3. "Typology of indicative measures under the ESF and YEI to address the COVID-19 crisis" under the ESF tab, where a number of examples of operations co-financed by the ESF, are presented, including short-time work schemes that may be open to any type of company.

In addition, the European Commission has adopted a Temporary Framework<sup>[1]</sup> to enable Member States to use the flexibility proposed under State aid rules to support the economy in the context of the COVID-19 outbreak. For more details on the support measures under the Temporary Framework and under the existing State aid rules, please consult the dedicated "State aid" tab of the CRII Q&A website.

[1] OJ C 91I, 20.3.2020, p. 1 and OJ C 112I, 4.4.2020, p. 1.

<b>HU</b>	The Reminder of the video conference on 18.03.2020 (part flexibility and scope) contains the possibility to broaden the eligibility to large companies. Unfortunately we were not able to identify the appropriate Commission proposals, which should amend these measures. Please provide details on what you were referring to, and under what circumstances and conditions it could be used.
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## **Transfers - Article 30(5) and Article 25a(5) CPR**

Flexibility to transfer funds (UPDATED)

***This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

The revised Article 30 of the CPR (Regulation (EU) No 1303/2013) provide for the possibility for programmes supported by the ERDF, Cohesion Fund and ESF, to transfer an amount of up to 8% of the allocation, as of 1 February 2020, of a priority, and no more than 4% of the

programme budget, to another priority of the same Fund in the same programme. Such transfers will be considered as not substantial and will not require a decision of the Commission amending the programme. These transfers shall not affect previous years, must comply with regulatory requirements and be approved in advance by the monitoring committee. The Commission should only be notified of the revised financial tables.

Indeed the CRII proposal adds flexibility for transfers within the limits set out in Article 30(5) of CPR and these shall not require a decision of the Commission amending the programme.

The Commission will apply all the flexibility allowed for within the current limits set by the CPR and the Fund-specific rules.

*In addition to the flexibility provided in Article 30(5) CPR, the Regulation (EU) 2020/558 (CRII+) introduces transfer possibilities between categories of regions and transfers between the ERDF, the ESF and the Cohesion Fund, in response to the COVID-19 outbreak. It is stated in Article 25a(4) CPR that for both type of transfers Member States should request for programme amendment through the procedure set out in Article 30 CPR and should submit revised programme or programmes.*

*In particular, as far as transfers between categories of regions is concerned, Article 25a(3) CPR derogates from Article 93(1), allowing, in addition to the possibility provided for in the Article 93(2) CPR, transfers of resources available for programming for the year 2020 between categories of regions.*

*For the transfers between Funds, Article 25a(2) CPR allows transfers of resources available for programming for the year 2020 for the Investment for Growth and Jobs goal between the ERDF, the ESF and the Cohesion Fund, derogating from the percentages at points (a) to (d) of Article 92(1) CPR and from requirements at Article 92(4) CPR.*

*current provisions under the CPR apply. More specifically, Article 93(2) CPR allows, in duly justified circumstances, to transfer up to 3 % of the total appropriation for a category of regions to regions in other categories including “in a major revision of the Partnership Agreement”. These transfers will need to be reflected in the annual update of the Partnership Agreement, as set at Article 16(4a) CPR. The Commission will ensure a quick assessment of any proposals to that end.*

*As far as other regulatory requirements, such as thematic concentration, are concerned, the CPR provisions and funds-specific rules still apply. Nevertheless, the Commission will apply all the flexibility allowed for within the limits set by the CPR and the CRII, in particular thanks to the enlargement of thematic objective 1 to investments necessary for strengthening the crisis response capacities in health services.*

<b>BE</b>	Belgium advocates the greatest possible flexibility. It is indeed important that measures can be implemented where necessary. In this context, it should also be possible to consider transferring funds between categories of regions.
<b>BE</b>	In that framework, could the Commission confirm what has been said in SMWP about giving as much flexibility as possible and to encourage the MS to negotiate about what is feasible with the geographical desk?
<b>PL</b>	Does the EC allow greater flexibility in transferring funds between categories of regions?
<b>LT</b>	Is it possible to transfer between the Funds - from ERDF, CF to priorities financed by

	ESF? What are the limits?
<b>HR</b>	Possibilities for reallocation of funds within the OP, proposed 8%/4%
<b>EE</b>	It was mentioned yesterday and is stated in the summary as well, that in relation to flexibility and scope "3% can be moved between funds". There is indeed a possibility in the CPR to transfer between categories of regions 3% (from which Estonia being one NUTS2 region cannot benefit from), but what is the legal basis for such a transfer between funds? "

Scope of transfers at Article 30(5) CPR

Art 30(5)CPR is proposed to provide more flexibility in addressing the COVID-19 outbreak (please see the recital 5 of the proposal COM(2020)113), the main idea being indeed to provide more flexibility to MS with a view to addressing the consequences of the COVID outbreak. However, the transfer possibility is also open for other transfers.

It should be noted that the procedure in Art 30(5) CPR only applies to the ERDF, the CF and the ESF; as regards the EMFF, for possible measures in relation to COVID-19 outbreak crisis alleviation and simplified procedure of OP amendments, MS should consult the fund specific regulation.

<b>DE</b>	Please confirm that the new Art. 30(5) CPR applies to all possible transfers, not only for transfers regarding investments related to the COVID-19 outbreak.
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Transfers without OP amendment, Article 30(5) CPR as modified under CRII proposal Thematic concentration (UPDATED)

***This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

Indeed, the CRII adds flexibility for transfers within the limits set out in Article 30(5) of CPR and these shall not require a decision of the Commission amending the programme.

*As far as thematic concentration is concerned, in accordance with Article 25a(5) CPR that is derogating from Article 18 CPR and Fund-specific Regulations, financial allocations set out in requests for programme amendments submitted or transfers notified pursuant to Article 30(5), on or after the entry into force of the CRII +, would not be subject to requirements on thematic concentration as set out in this Regulation or the Fund-specific Regulations.*

*Regarding other regulatory requirements, such as thematic concentration, are concerned, the CPR provisions and funds-specific rules still apply. Nevertheless, the Commission will apply all the flexibility allowed for within the limits set by the CPR and Fund-specific rules and the CRII, in particular thanks to the enlargement of thematic objective 1 to investments necessary for strengthening the crisis response capacities in health services.*

<b>UK</b>	Can the Commission consider a higher programme allocation threshold in this measure and a short-term derogation from the thematic concentration levels? The amendment to Article 30 of CPR, permits moves of up to 8% of the allocation as at 1/2/20 at priority level to another priority, up to 4% of the programme allocation without a Commission decision. This will speed up changes needed to react to the circumstances. However, it may not be substantial enough and its impact may be less
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because all other regulatory requirements will still need to be met, including PA thematic concentration levels.

**PL**

To which extent thematic concentration should be respected when reallocating ERDF between TOs? Is there any relaxation of the rules in this respect, taking into account the limited possibilities of reshuffling allocations at this moment of OPs lifecycle, when the majority of funds is already contracted.

**LT**

Due to the critical situation in public health and employment sector the amount of funds needed under TO9 increased drastically. Redistribution actions cannot be taken due to the ERDF thematic concentration limitations. What is your opinion on the issue and whether it is possible to expect lower ERDF thematic concentration requirements (for instance 10 percent point) in order to provide necessary financing to the health and employment sectors?

**PL**

Will there be any changes in terms of thematic concentration?

**IT**

Considering the capping to the transfers of resources within the programme set by the proposed regulation regarding the Coronavirus Response Investment Initiative, what kind of solution does the Commission envisage in order to guarantee a wider flexibility in the transfer of resources towards measures addressing the health crisis, allowing to make such transfers by way of derogation to the thematic concentration rules for both for ERDF and ESF regulation?

Transfers between specific objectives within a priority axis (Article 30(5) CPR)

The limits for transfers without OP amendment included in the CRII (Article 30(5) CPR), apply to transfers between priorities of the same Fund of the same programme. Such transfers affect the OP financing plan. The proposed limit, transfer of no more than 8% of the allocation to the priority as approved by the Commission as of 1 February 2020 of no more than 4% of the programme budget, does not apply to the transfers between specific objectives within the same priority as such transfers do not affect the OP financing plan.

**CZ**

Do the transfers between the specific objectives inside one priority axis also count for the 4% limit? We believe it is not the case (but it is connected to the previous question).

Application of flexibility at Article 30(5) CPR

The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy to respond flexibly to the rapidly emerging needs in the most exposed sectors. Art 30(5)CPR is proposed to provide more flexibility in addressing the COVID-19 outbreak (please see the recital 5 of the proposal COM(2020)113). Therefore, the main idea is indeed to provide more flexibility to MS with a view to addressing the consequences of the COVID-19 outbreak. However, the transfer possibility is also open for other transfers.

**FR**

Do the flexibility measures proposed to facilitate transfers between priorities (modification of Article 30 (5)) apply only within the framework of the implementation of CRII or could they be used without condition of link with funding for COVID-19 measures?

## Applicability of flexibility at Article 30(5) CPR to 2020 installment

The proposed Article 30(5) CPR allows to transfer amounts within the limits set out in this provision, applicable to the allocation of the priorities of the programme as approved by the Commission as of 1 February 2020. These transfers shall not affect previous years, i.e. changes to the financial plan can only be made for the 2020 instalment.

Regarding pre-financing amounts, in accordance with the proposed amendment to the Article 139(7) CPR, the recoverable amounts for the accounts submitted in 2020 will not be recovered by the Commission and shall be used to accelerate investments related to the COVID-19 outbreak and eligible under CPR and Fund specific rules.

<b>DE</b>	The new Art. 30 (5) refers to the allocations as of 1 February 2020. Does this refer to the entire financing plan 2014 to 2020, the 2020 annual instalments or the annual pre-financing amount?
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Calculation of limits for transfers at Article 30(5) CPR (UPDATED)

***This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

The CRII proposal allows for transfers to another priority of the same Fund of the same programme without OP amendment, as long as the limits laid down in proposed Article 30(5) CPR are respected. The proposed limits are to be understood as per priority: an amount from a priority can be transferred to another priority under the same Fund and within the same programme if the transferred amount corresponds to up to 8% of the allocation of the outgoing priority or up to 4% of the total programme allocation. The MS shall apply the limits set by the proposed Article 30(5) CPR to the allocation of the priorities of the programme as approved by the Commission as of 1 February 2020. These changes have to be notified to the Commission. Changes going beyond these limits would require a Commission decision.

~~Furthermore, it is reminded that it is possible to make transfers between the ERDF and the ESF subject to Commission approval. This is possible as the Common Provisions Regulation does not determine the split between the ERDF and the ESF. It only contains an aggregate amount for the ERDF and the ESF by category of region. However, for the ESF each MS needs to ensure that the ESF minimum share is respected, i.e. the allocation to the ESF cannot be lower than the amount that is determined in accordance with the methodology set out in Article 92(4) and Annex IX CPR. For the ERDF there is no minimum share. It is therefore possible to make transfers between the ERDF and the ESF as long as the ESF minimum share is respected. However, these transfers cannot concern previous years. They are limited to the 2020 allocation. Furthermore, the related programme amendment needs to be approved by the Commission still in 2020.~~

~~Transfers can also be made between programmes (either concerning the same Fund or between the ERDF and the ESF), but such transfers will be limited to the 2020 allocations and these programme amendments need to be approved by the Commission in 2020.~~

<b>EE</b>	How should the transfers be calculated? What is the correct interpretation: 1) 4% of the amount of the programme could be added to all/several priorities 2) 4% of the amount of the programme is the total sum of all transfers between funds?
<b>PT</b>	The 8% threshold transfer present in article 30(5) is applicable to the outgoing axis,

	meaning that if needed the axis that will be increased to support COVID measures can increase more than 8%. Is this correct?
<b>FR</b>	In the case of a transfer of funds from a priority axis to two other priority axes (e.g. Axis 1 funds are transferred to Axis 2 and 3), the 8 % threshold applies as a whole or separately to the two transfers to the two top priorities?
<b>FR</b>	In the case of several transfers from one priority axis to another priority at different times (e.g. a first transfer from axis 1 to 2 and a few months later a second transfer from axis 1 to 2), the 8 % threshold applies to each transfer or globally (i.e. for the two transfers with an interval of a few months)?
<b>BE</b>	In the case where the remaining funds were planned for tourism activities and should now be directed towards SMEs; in the case, where this means a transfer of the budget line from one axis to another is there a limit to this transfer and can it be accepted without an OP amendment?

Flexibility provisions at Article 30(5) CPR

The MS shall apply the limits set by the proposed Article 30(5) CPR to the allocation of the priority axes of the programme as approved by the Commission as of 1 February 2020. These changes should be notified to the Commission. In case an OP amendment is planned to be submitted through SFC for Commission approval and is already under MC scrutiny, it is recommended that it is consistent and includes the transfers applied in accordance with Article 30(5).

<b>PL</b>	The reference day for calculation of the allocation is 1 February 2020, so the MA should use as the basis for calculation of 8% the allocation before the modification as the modification is with the MC and not yet submitted in SFC, is that correct?
<b>PT</b>	Taking into account that we have several OP under last steps of OP amendment decision after the performance framework allocation and that those decisions will be finished previous to the submission to the Monitoring Committee of COVID reprogramming exercise it's not understandable why we should not consider the most update COM decision at the time of reprogramming proposal (instead of the 1st of February situation)

Change of co-financing rate (UPDATED)

***This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is highlighted.***

In accordance with Article 60(1) and Article 120(1) CPR, the co-financing rate and the maximum amount of support from the Funds for each priority axis are fixed with the Commission decision adopting an operational programme. Consequently, to change the co-financing rate of a priority axis, an OP amendment will be necessary in accordance with Article 30(1) and (2) CPR. However, if there is a transfer, based on proposed Art 30(5) CPR, between priorities with different co-financing rates, the co-financing rate of the receiving priority will be applied to the transferred amount and it does not constitute a change in the co-financing rate on a priority level.

Additionally, modulation of co-financing rates is allowed at operation level, as long as the co-financing rate set up for the relevant priority axis is respected at the priority axis level.

Finally, Article 25a(1) CPR, included in the CRII +, introduces the possibility for Member States to request that 100% co-financing rate is applied to expenditure declared in payment applications during the accounting year starting on 1 July 2020 and ending on 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

Such requests shall be made through the procedure for amendment of programmes set out in Article 30 CPR and be accompanied by the revised programme or programmes. The 100% co-financing rate would apply only if the corresponding programme amendment is approved by the Commission at the latest before the submission of the final application for an interim payment in accordance with Article 135(2) CPR, i.e. at the latest on 31 July 2021. If payment claims were submitted and paid for the accounting year before the OP amendment is approved, then a correction upwards of the amount paid during the accounting year will be made when processing the final interim payment claim. In addition, Member States will have to notify the table referred to in Article 96(2)(d)(ii) CPR (i.e. the table specifying for the whole programming period, for the OP and for the Priority axes, the amount of support of the funds and the national co-financing), confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100%, before submitting the first payment application for the accounting year starting on 1 July 2021. This notification will allow that co-financing rate to be applied by priority axis to future payment claims submitted from 1 July 2021 onwards.

<b>EE</b>	If funding is transferred between priority axes, may the share of the EU contribution rate also be changed without the Commission's decision, provided that the maximum limit in the CPR will still be respected (85% in our case)?
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Calculation of amounts for Article 30(5) transfers – modification of financial tables

Article 30(5) CPR sets the limits for transfers between priorities of the same programme under the same fund to 8% of the allocation of the outgoing priority and a total 4% of the programme allocation. For this purpose, for ETC tables 16, 17 and 18 and for IGJ tables 18a, c and 19 under Section 3 of the OP have to be modified and notified to the Commission. No modification of the Financing Plan at table 15 for ETC and 17 for IGJ is required. However, the transferred amounts cannot be higher than the amounts set in Table 15 ETC and 17 IGJ for the year 2020.

<b>FR Interreg</b>	How can a 2020 tranche be defined at the level of a priority axis, whereas this information does not exist at the level of priority axes in the operational programme: in the OPs, the annual tranches are defined at the global level (Table 15).
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Transfers between thematic objectives of the same priority axis (Interreg)

The new Article 30(5) CPR provides for possible limited transfers between priorities only. In this case, a notification of the revised financial tables to the Commission via SFC is sufficient. If, as a consequence of such amendments, also a reallocation between TOs is needed, only in that case it can be done within the above mentioned notification and does not require approval by Commission decision. All other transfers require approval by Commission decision.

<b>FR</b> <b>Interreg</b>	<p>Can you confirm that we can make use of the transfer option offered by the new Article 30(5) for transfers between thematic objectives from the same priority axis.</p> <p>If this is the case, how should we apply the modalities for the calculation of the 8 % cap. Is this percentage to be applied to the initial amount foreseen for this TO in the priority axis concerned? What about the concept of tranche 2020 for a thematic objective, given that we do not know how to define it at the level of a priority axis?</p>
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## **Transfers - Article 25a(2)-(3) and (13) CPR**

Scope of transfers at Article 25a (2) CPR – Outermost regions

The special allocation for the outermost and northern sparsely populated regions is part of the resources for the Investment for growth and jobs goal in accordance with Art 92(1)(e) CPR. However, given their specific purpose, the Commission proposal for Article 25a(2) CPR (proposal COM(2020)138) does not derogate from point (e) of Article 92(1) CPR, and therefore is excluding transfers from and to the special allocation for the outermost regions (please also see recital (5) of the proposal).

Nevertheless, in accordance with Art 25a(2) and (3) CPR (proposal COM(2020)138), the Commission is proposing to introduce or enhance the possibility for financial transfers between the ERDF, the ESF and the CF. Furthermore, transfer possibilities between categories of regions would also be exceptionally increased. Therefore, resources from ERDF and ESF mainstream allocations can be transferred to the mainstream allocation of the outermost regions.

<b>FR</b>	Is it possible to transfer ERDF or ESF to the specific allocation for outermost regions?
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## **Co-financing rate - Article 25a(1) CPR**

Impact on individual projects

Article 25a(1) CPR, introduced by Regulation (EU) 2020/558 provides for a possibility to increase the co-financing rate up to 100% to one or more priority axes of a programme. It is under the remit of the managing authority to decide, within the limits of state aid rules and in the respect of transparency, non-discrimination and equal treatment between beneficiaries, how specific operations will be supported in terms of public support, including support from the Cohesion policy Funds.

It is recalled that Article 129 CPR sets a requirement that the Member State shall ensure that by the closure of the operational programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds paid by the Commission to the Member State.

See also the sections 'COVID-19 and force majeure' and 'Ongoing implementation - eligibility & flexibility' above (e.g. change of conditions for support as suggested).

<b>PL</b>	Will the article 25a(1) apply directly only to financial relations between Member
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States and the Commission? The change in co-financing rate does not apply directly to individual projects. It means that Member States may still feel free to set the level of the EU co-financing for individual projects. In projects where beneficiaries have difficulties in providing their own financial contribution MAs may raise the level of co-financing even up to 100%, while in other projects - both currently implemented and the new ones - co-financing rate may be established at the lower level. Please confirm.

Notification of financial tables at the end of accounting year 2021

According to Article 25a (1) CPR in the Commission proposal (2020)138 to amend the CPR, Member States shall notify the table referred to in Article 96(2)(d)(ii), confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100%.

If however such a notification is not done within the established deadline, the Commission will not be in a position to continue applying the increased 100% co-financing rate as its possible duration is limited by the CPR to the accounting year ending on 30 June 2021. The Commission will thus reimburse support from the Funds according to the financing plan that was applicable during the accounting year ending on 30 June 2020.

**PL** What will happen if the Member State does not submit such a request within the required time limit? Will the EC modify the financial tables and co-financing rate itself?

Notification of the new financing plan

The notification to the Commission of the table referred to in Article 96(2)(d)(ii) CPR, confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100% in accordance with Article 25(a)(1) CPR should be done via the standard SFC module for programme amendments. This table does not require an approval by the Commission as it is the table that was applicable during the accounting year ending on 30 June 2020. This table was already approved by the Commission prior to the temporary application of the 100% co-financing rate.

**FR** *Sous quelle forme la notification du nouveau plan de financement du PO doit-elle intervenir ? Un module spécifique dans SFC est-il envisagé ?*  
In what form should the notification of the new financing plan of the OP take place?  
Is a specific module in SFC envisaged?

Justification for 100% co-financing rate and its scope (UPDATED)

***This reply was updated on 8 May 2020 to reflect an additional question related to the same topic. The text added or changed during the update is highlighted.***

Article 25a(1) CPR, as introduced by [the Regulation \(EU\) 2020/558](#) under the Coronavirus Response Investment Initiative Plus, does not restrict the temporary application of a 100% co-financing rate to the priority axes that support projects related directly to the COVID-19 outbreak. The aim of this proposal is to alleviate the burden on public budgets responding to the crisis situation, as explained in recital (4).

The requests for the temporary increase of the co-financing rate shall be made through the procedure of the programme amendment laid down in Article 30(1) CPR. Therefore, the

requests for programme amendment should be duly justified by the Member State, and shall be assessed by the Commission in accordance with Article 30(2) CPR.

The objective of the regulatory amendment offering Member States the possibility to request an increase of the co-financing rates is to alleviate the burden on public budgets responding to the COVID 19 crisis. This may therefore constitute as such a proper justification for the request for the co-financing rates increase. In addition, the expected impact of the change on achieving the Union strategy for smart, sustainable and inclusive growth and the specific objectives defined in the programme must also be provided, as required by Article 30(1) CPR. The Commission would be in a position to approve Member States requests for amendment only in case these explanations are provided. Given the urgency of the situation, the Commission will process such requests for amendment as quickly as possible and will be flexible in their assessment.

<b>DE</b>	Does the temporary application of 100% co-financing from the EU budget for the implementation of cohesion policy programmes concern all (including on-going) measures or only dedicated CRII measures?
<b>RO</b>	Does 100% co-financing concern only priority axes supporting response to the COVID-19 outbreak? Is it necessary to present justification relating to the response to COVID-19?
<b>ES</b>	Does 100% co-financing apply to all the expenses declared in the payment requests during said accounting year? Or does it only apply to expenditures relative to the priorities affected by the COVID-19 outbreak?
<b>PL</b>	What criteria will the Commission take into account when deciding about approval of programme amendment? May the Commission not approve proposed changes?

100% co-financing rate and 10% flexibility at closure

As regards the question from Estonia and the second question from Romania and Poland, after 30 June 2021, the national contribution will not have to be increased in order to compensate for the higher co-financing rate that would be applied between 1 July 2020 and 30 June 2021. The temporary application of the 100% co-financing rate to the chosen priority axes will work as a speeding up of reimbursement of the EU resources for the accounting year that starts on 1 July 2020 and ends on 30 June 2021.

In accordance with Article 25a(1) CPR introduced by the [Regulation 2020/558](#), Member States must submit requests for modification of the co-financing rate through the procedure for amendment of programmes set out in Article 30 CPR. Such request must be accompanied by the revised programme or programmes. The 100% co-financing rate will only apply if the corresponding programme amendment is approved by the Commission at the latest before the submission of the final application for an interim payment in accordance with Article 135(2) CPR (in this case the submission of the final application for an interim payment has to take place before 31 July 2021).

For the following accounting years, i.e. 2021-2022, 2022-2023 and 2023-2024, the co-financing rate for these priorities will be brought back to the level that was applicable before the temporary application of the 100% co-financing rate. To this end, and in line

with Article 25a(1) CPR introduced by Regulation 2020/558, Member States must notify the table referred to in Article 96(2)(d)(ii), i.e. it does not require a full programme amendment procedure as set out in Article 30 CPR.

The example provided by Estonia is in substance correct. The temporary increase of the co-financing rate to 100% in the accounting year 2020-2021 will speed up reimbursement of the EU resources, but it will not increase the total Funds' allocation for the programme, and it will not have to be compensated by an increase in the national contribution. In practice, applying the temporary 100% co-financing rate will mean that:

- the total contribution from the Funds will be reached sooner than without it;
- the average EU co-financing rate for the whole programming period will be higher than initially planned, and consequently, the national co-financing will be proportionally lower, what would be possible thanks to the derogation from Article 120(3) CPR in the proposed Article 25a(1) under the CRII Plus package. The lower national co-financing will result, consequently, in a lower total volume of investments than initially planned.

As regards the first question from Romania, the proposed Article 130(3) CPR ensures that the total contribution from the Funds paid out through payments of the final balance to a programme shall not exceed the eligible public expenditure declared and the contribution from each Fund and category of regions to each operational programme as laid down in the decision approving the operational programme, while providing up to a 10% flexibility between the allocations of priorities of the programme.

It is also important to keep in mind that in accordance with Article 129 CPR Member States have to ensure that by the closure of the operational programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds and the EMFF paid by the Commission to the Member State. At closure Member States therefore need to ensure that the entire contribution they have received from the Funds and the EMFF has been passed on to beneficiaries.

Moreover, as the financial table that will be applicable for the 2021-2022 accounting year will be the one that is applicable at the end of the 2019-2020 accounting year, there is no need to amend the targets for the indicators, including the financial indicator, in the performance framework. All efforts should be made (e.g. by making use of the possibilities provided by the Commission's amendment proposals, adjustments to operations, reprogramming if necessary and possible, etc.) to ensure that programme targets are met. The Commission will cooperate with Member States to that end.

<b>RO</b>	Can you please clarify how the temporary application of the 100% co-financing rate will work in practice and the link, if any, with the other new flexibility which concerns the possibility for payments to exceed by 10% the allocation of a priority at programme closure? In the remaining years following the application of the 100% EU contribution, would the national contribution need to be increased proportionately in order to remain within the overall financial framework of the
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	programme?																																		
EE	<p>Do we understand correctly, that if the 100% EU co-financing rate option is implemented the total contribution for the accounting year 2020-2021 would decrease (in 2021) on the account of lower rate of national contribution. Is the below example correct (initial EU co-financing rate 75%)?</p> <table border="1"> <thead> <tr> <th></th> <th>Year</th> <th>EU contribution (EUR)</th> <th>National Contribution (EUR)</th> <th>Total Contribution</th> </tr> </thead> <tbody> <tr> <td rowspan="3">Now</td> <td>2020</td> <td>75</td> <td>25</td> <td>100</td> </tr> <tr> <td>2021</td> <td>75</td> <td>25</td> <td>100</td> </tr> <tr> <td>TOTAL</td> <td>150</td> <td>50</td> <td>200</td> </tr> <tr> <td rowspan="3">After the OP AMD</td> <td>2020</td> <td>100</td> <td>0</td> <td>100</td> </tr> <tr> <td>2021</td> <td>50</td> <td>16,67</td> <td>66,67</td> </tr> <tr> <td>TOTAL</td> <td>150</td> <td>16,67</td> <td>166,67</td> </tr> </tbody> </table>					Year	EU contribution (EUR)	National Contribution (EUR)	Total Contribution	Now	2020	75	25	100	2021	75	25	100	TOTAL	150	50	200	After the OP AMD	2020	100	0	100	2021	50	16,67	66,67	TOTAL	150	16,67	166,67
	Year	EU contribution (EUR)	National Contribution (EUR)	Total Contribution																															
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PL	<p>Will the Member States have to request for modification of the co-financing rate through the procedure for amendment of programmes?          What will be the expected new level of the EU co-financing: generally the same as the current one (in case of Poland 80-85%), or maybe lower in order to "compensate" this temporary increase of the EU co-financing rate to 100% of eligible expenditure? The reply is provided in art. 25a, par.1.          What about the following accounting years (i.e. after 1 July 2021)? Will the financial tables of the operational programmes have to be changed once again?</p>																																		

## **Retroactive selection - Article 25a(7) CPR**

Completed operations which started before 1 February 2020

With a view to ensuring an effective use of ESI Funds and reducing the risk to the budget of the Union, Article 65(6) CPR does not allow for the selection (and thus financing) of operations that have been physically completed or fully implemented before the application for funding by the beneficiary under the programme was submitted to the managing authority.

However, in the current exceptional situation of the coronavirus outbreak the Commission proposed that this should exceptionally be allowed to ensure that expenditure of **operations already physically completed or fully implemented can receive EU support**

**if they are aimed at fostering the crisis response.** This means that operations for example where medical equipment is purchased, and the purchase was already made before the entry into force of the amending proposal, could become eligible for EU support retroactively. Expenditure for such an operation would still need to be incurred and paid within the period of eligibility applicable under a given programme and State aid rules – see further below.

In order to benefit from the proposed derogation, the operations would need to comply with both the applicable State rules and the CPR:

As regards State aid, the Temporary Framework applies to all relevant notified measures as of 19 March 2020 even if the measures were notified prior to that date.

The amendment adopted on 3 April 2020 does not change this application date. However, as it introduces flexible rules for COVID-19 related investment aid, under sections 3.6 (COVID-19 relevant research and development), 3.7 (testing and upscaling infrastructures) or 3.8 (production of COVID-19 relevant products), it clarifies how the incentive effect of the aids has to be assessed in such cases.

For investment projects covered by these three sections, the incentive effect of the aid is presumed for projects started as of 1 February 2020, and all expenditures relating to the projects are eligible if in line with the definition of eligible costs under the relevant section of the Temporary Framework.

For investment projects started before 1 February 2020, they can receive aid under the Temporary Framework, but such aid is considered as having an incentive effect only if it is necessary to accelerate or widen the scope of the project because of the COVID-19 outbreak:

- that excludes de facto aid for fully implemented operations;
- only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid: that means for a project already started before 1 February 2020, expenditures already incurred that cannot be considered as additional costs in relation to the acceleration or the widened scope of the project cannot be considered as eligible.

As regards the CPR, the first paragraph of the proposed Article 25a(7) CPR provides a derogation from Article 65(6) CPR thus making it possible for the managing authority to select an operation which is physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority. This derogation applies only for **operations fostering crisis response capacities in the context of the COVID-19 outbreak** and does not apply to all other operations, to which Article 65(6) CPR continues to apply. Provided that the State aid rules are complied with, expenditure related to such operations would be eligible:

- as of 1 February 2020 if the programme needs to be amended to extend eligibility to cover the new scope. The necessary programme amendment and the related State aid notification may be adopted later, without delaying deployment of measures.
- As of 1 January 2014 or as of the date of submission of an amendment which made such expenditure eligible prior to 1 February 2020, when the scope was already included in the programme or a submitted programme amendment proposal. The specific area does not have to be explicitly mentioned in the description of the

priority axis, but should fit into the scope of priority axes and types of projects (types of actions and beneficiaries). This needs to be verified in each specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions (and in this case, the eligibility date would be as of 1 February 2020).

Therefore, expenditure incurred and paid prior to 1 February 2020 for operations fostering crisis response capacities in the context of the COVID-19 outbreak (e.g. costs of IT system development needed for teleworking arrangements) might be eligible if the expenditure was already eligible under a given operational programme prior to 1 February 2020, including when the operation is already completed or fully implemented on that date. In the latter case, such operations cannot receive State aid under the Temporary Framework.

<b>PT</b>	<p>In accordance with the Temporary Framework (Commission communication of 3.04.2020) <i>"For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid; The following amendments to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak will take effect as of 3 April 2020."</i></p> <p>Can fully implemented operations be supported under the Staid Aid Temporary Framework, as allowed by the Regulation (EU) 1303/2013 amendment, before the notification of the scheme notification and / or before 3 April 2020?</p> <p>Can the projects where the aid is necessary to accelerate or widen their scope started before 1 February 2020 have eligible expenditures before that date?</p>
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## **Article 139(7) CPR**

Use of liquidity provision at Article 139(7) CPR

In line with the revised Article 139(7) of the CPR, supported by recital 8 of regulation (EU) 2020/460, the Commission will not issue a recovery order for amounts recoverable from the Member State for the accounts submitted in 2020. Amounts not recovered from for the accounts submitted in 2020 shall be used to accelerate investments related to the COVID-19 outbreak and eligible under this Regulation and Fund specific rules. This includes investments in the health sector as well as investment to sustain the economic activity in order to mitigate the economic consequences of the health crisis.

<b>BE</b>	Can the Commission confirm that the use of the liquidity provision is compulsory? Or can we partially or totally refrain from using CRII?
<b>FR</b>	Within the framework of the CRII, concerning the liquidity made available following the non-repayment of pre-financing, must it necessarily finance support measures linked to the COVID-19 epidemic?
<b>DE</b>	There is no obligation to use the amounts not recovered for "special" measures related to the COVID-19 outbreak. Modifying the operational programme is optional.

Application of flexibility at Article 139(7) CPR

The proposed additional subparagraphs to Article 139(7) CPR derogate from the first subparagraph of that Article, to relinquish this year the Commission's obligation to request refunding of unspent pre-financing for European structural and investment funds from the Member States. These are the amounts that shall be exclusively used to accelerate investments related to the COVID-19 outbreak and that are eligible under the CPR and Fund specific rules.

<b>FR</b>	In this regard, can the Commission clarify the legal interpretation of paragraph 5 article 2 of the draft regulation, amending article 139 (7) of regulation 1301/2013, and in particular the link between the two sentences "By way of derogation from the first subparagraph, the Commission shall not issue a recovery order for amounts recoverable from the Member State for the accounts submitted in 2020. Amounts not recovered shall be used to accelerate investments related to the COVID-19 outbreak and eligible under this Regulation and Fund specific rules. "?
<b>DE</b>	The money will be considered as "special" in the following accounting year and will not be considered as interim payments or pre-financing as declared in Art. 139 (6b). The MS will not have to reimburse the money in the accounting of the following accounting year. Thus, the Member States will have time to the end of programme closure spending the amounts.

Use of additional liquidity - reporting

The existing reporting obligations for MS and monitoring rules for the Commission apply. The amount of pre-financing at stake will be cleared at closure, on the basis of the eligible expenditure declared to the Commission.

<b>FR</b>	If the mobilization of liquidity should necessarily support measures linked to the COVID-19 epidemic, how will the Commission ensure the monitoring and control of this obligation?
<b>DE</b>	The calculated amount to be recovered by the Member State related to accounting year 2018/2019 will stay as a matter of routine on the bank account of the Member State, no additional report or submission of any additional information is necessary?
<b>HU</b>	How, when and on what basis could the Commission or the European Court of Auditors control/audit whether the given Member State has complied with this criteria? Is there a sanction if a Member State fails to comply with this requirement?
<b>FR</b>	How should the traceability between the amounts of the unrecovered pre-financing and the expenditure of Covid-19 be ensured?

Article 139 (7) – recovery order – amount used – submission of information

Normally, in case the calculation of the balance in accordance with Article 139(6) CPR results in a negative amount, a recovery order is issued. In case the amount due will be offset against future payments the recovery order is still issued. In accordance with the proposal, a recovery order for amounts to be recovered following the acceptance of the accounts will not be issued. As a result no amounts will be offset against future ones.

The calculated amounts to be recovered remain on the bank account of the Member State to provide liquidity to the Member State to finance measures related to the COVID-19

crisis. No additional report or submission of information has been foreseen in the legislation.

<b>DE</b>	What happens if the COM does not issue a formal recovery order according to Art. 139 CPR because a member state is offsetting against amounts due to the Member State according to Art. 139 para 7 regulation CPR? In this case, is the factual settlement amount used?
<b>DE</b>	Will the calculated amount to be recovered by the Member State related to accounting year 2018/2019 stay as a matter of routine on the bank account of the Member State? Is it correct, that no additional report or submission of any additional information is necessary?

Use of Article 139(7) when all EU resources are committed to projects

The additional subparagraphs in Article 139(7) CPR, as introduced by Regulation (EU) 2020/460, set out that the Commission shall not issue a recovery order from amounts recoverable from the Member State for the accounts submitted in 2020 and that these amounts shall be used to accelerate investments related to the COVID-19 outbreak. Recital (8) of that Regulation explains that the aim of this amendment is to ensure that Member States have sufficient financial means to make the investments needed without delay. These resources will be made available to the Member State, regardless of their progress in implementation of the EU resources. It is up to the Member State to decide how to make the best use of the unrecovered amounts in a timely manner and what types of investments are best suited as a response to the current public health crisis. These amounts shall be cleared and recovered at closure, on the basis of the eligible expenditure declared to the Commission.

When all EU resources are already committed, the Member State may decide to modify the on-going projects or redirect the EU resources to other projects that are related to the COVID-19 outbreak. As regards the question on the types of investments that can be supported by the unrecovered amount, both ERDF and ESF may provide such support as long as the operations comply with applicable law. In accordance with Article 65(1) CPR, the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, the CPR or the Fund-specific rules.

<b>HU</b>	Could the Commission clarify the 2nd part of the modification of Article 139 (7)? How would this provision apply in case of those Member States, which have already committed 100% of their allocation? Does this obligation foreseen in this paragraph mean that in the framework of the CPR the Commission can oblige Member States to implement 100% national funded projects?
<b>HU</b>	What does investment exactly mean? Does it mean only ERDF types of measures or soft, ESF types measures as well?
<b>FR</b>	Should the mobilisation of the CRII only cover expenditures that are earmarked for the response to the health crisis, or can it be considered for other types of expenditure; in particular those accompanying the exit from the crisis or financial support mitigating the consequences of the crisis on ongoing projects, which are also made necessary by the Covid-19 pandemic (to improve the general cash flow of



	the programmes in order to further ease the policy of advances and reimbursements to programme promoters)?
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## **Financial instruments - Article 37(4) CPR (see also ERDF section)**

For financial instruments, does working capital includes short-term liquidity?

Financial instruments under proposed Article 37(4) could be used to provide adequate liquidity or short-term financing for companies (including bank guarantees), as such liquidity support is within the scope of 'working capital' referred to in the proposed provision. Working capital could also be supported from ERDF through the other forms of financing, namely grants and repayable assistance - see reply to your other question on 'Can grants or repayable assistance be used for working capital?'.

Working capital has already been defined in the financial instruments context (see: [EGESIF 14\\_0041-1](#)), and it could be understood broadly, as the difference between current assets and current liabilities of an enterprise – which is synonymous with liquidity. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables.

For financial instruments, working capital support has already been eligible since the beginning of the programming period, if justified by ex ante assessment. The Commission recommended that the support to enterprises to finance working capital facilities would be expected generally to have a maturity of at least two years (notwithstanding shorter maturities on a revolving basis). This type of support continues to be eligible.

The proposed new provision in Article 37(4) extends the eligibility of working capital support, irrespective of its maturity, provided that final recipients are **SMEs**, such support is **necessary** as a temporary measure to provide an effective **response to a public health crisis** and if such support is **covered by the priority axis**.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this must be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. **Working capital does not have to be explicitly mentioned in the description of the priority axis**, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible from 1 January 2014.

In case the programme needs to be amended to extend eligibility to cover the working capital, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to the public health crisis**. The necessary programme amendment may be adopted later, without delaying deployment of measures. Please refer to specific QA document concerning programme amendments which would help guide you through the process if needed.

<b>EE</b>	Does Article 37(4) CPR amendment allow also under the „working capital“ to ensure
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*the adequate liquidity or short-term financial instruments for companies (including bank guarantees)? In Article 37(4) on financial instruments it is added that financial instruments may also provide support in the form of working capital to SMEs if necessary as a temporary measure to provide an effective response to a public health crisis.*

Financial instrument support to large enterprises, including mid-caps

In line with Article 37(4) CPR, all types of enterprises are potentially eligible for working capital support through financial instruments. However, as far as non-SMEs (mid-caps and large enterprises) are concerned, there may be certain limitations, on the possibility of using ESI Funds to provide support, stemming from Fund-specific rules and from State aid rules. In addition, the relevant programme and priority axis may restrict support to SMEs. (See: [EGESIF\\_14\\_0041-1](#), section 2.1.1). Article 2(6) of Regulation (EU) 2015/1017 defines the small midcap companies as entities having up to 499 employees that are not SMEs while, according to Article 2(28) CPR, SMEs are defined in the [EU Recommendation 2003/361](#). We recall that there is no definition of mid-caps under the CPR and Fund-specific rules and the distinction is only between SMEs and non-SMEs, hence the small mid-caps are to be treated as non-SMEs. This does not preclude the relevant programme, priority axis or national rules from providing for specific treatment of small midcaps. Therefore, support to midcaps through financial instruments can be eligible under the current rules subject to all applicable provisions being complied with.

Article 37(4) CPR allows for ERDF-funded working capital support through financial instruments to all types of enterprises regardless of their size, including large enterprises and midcaps. The CRII and CRII+ Regulations do not bring any change in this regard.

Both the CRII and CRII+ proposals introduce some additional flexibility and clarification on MS providing working capital support through grants (only) to SMEs (amendment of Article 3(1) ERDF) and working capital support to SMEs through financial instruments if necessary as a temporary measure to provide an effective response to a public health crisis (amendment of Article 37(4) CPR). The scope of these amendments does not affect the currently applicable ESIF framework for support to large enterprises.

Similarly, the CRII and CRII+ proposals do not provide any specific amendment in regard to support to mid-caps and large enterprises through equity products of ESIF-funded financial instruments.

In conclusion, ESIF support for working capital in enterprises, as for any investment financing to enterprises through financial instruments, is subject to compliance with two basic eligibility criteria: the types of enterprise and support targets. Article 37(4) CPR does not limit such support only to SMEs and defines the scope of targeted activities that could be supported by ESIF financial instruments, in accordance with the CPR provisions, other applicable Fund-specific and State aid rules (as modified to address the COVID-19 public health crisis and to address specifically, for all types of firms, working capital needs, including through financial instruments).

**CZ** CZ MA in the envisaged OP amendment reflecting the COVID-19 situation intends to reallocate funds to a financial instrument for SME support. The intended support should also be directed to small mid-caps as defined in Article 2(6) of Regulation (EU) 2015/1017 of the European Parliament and of the Council. Is this support eligible under current rules?

<p><b>SK</b></p>	<p>For large enterprises, working capital support to cover such salaries expenditure would be eligible from ERDF only if provided in the form of financial instruments. See: financial instruments guidance on working capital.” Would you please provide details about the legal basis and specify eventual limitations for such financial instruments?”</p>
<p><b>LV</b></p>	<p>Due to the COVID-19 pandemic impact on the economic situation, we have identified the need to finance operations for the mid-cap companies (250-3000) that are viable in the long-term in the form of equity type products (equity investment, quasi-equity investment, venture debt etc.). Equity investments will be mainly targeted to foster the availability of liquidity for the midcaps.</p> <p>Taking into consideration that there are significant limitations for large enterprises on the possibility of using ESI Funds from Fund-specific rules and from state aid rules, we would like to ask you for clarification for possible support to mid-caps and large enterprises in the context of COVID-19 regulation.</p> <p>Good practice examples, how the ERDF can finance mid-caps companies through financial instruments, considering the restrictions set by the ERDF, would be helpful.</p>

Public procurement, refocusing existing financial instruments

The Public Procurement directives provide for a full set of different possibilities to tackle efficiently different urgency situations. More information can be found in the [Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 adopted on 31 March 2020](#). This guidance focuses especially on procurements in cases of extreme urgency, which enable public buyers to buy within a matter of days, even hours, if necessary. This reply complements the guidance in the specific context of financial instruments.

First, public contract modifications aiming to “save” the current public contracts are, in principle, acceptable. Such modifications would be e.g. extensions of the delays to execute the contract, changes in conditions of payments and other minor modifications **that have become necessary because of the crisis**.

When the proposed modifications go beyond saving the contract, but intend to adapt it to the current situation, such a change could in principle be acceptable only if the overall nature of the initial contract is not modified. Acceptable changes include raising the amounts of the initial contract value when providing working capital to SMEs hit by the COVID-19 crisis or other crisis-related changes. For example, if the initial public contract was to provide working capital to SMEs in a specific region or in a specific sector, it could, in general, be acceptable to raise the amounts by up to 50% or when the public contract was valid until a certain date, it could be justified to extend it by 6 months.

On the contrary, modifications that would change the overall nature of the contract would not be acceptable. Such modifications could be, for example, that the public contract is modified to apply to a new category of SMEs (and no longer only to the SMEs of the original sector of production) and to another region (in addition to the originally defined one) or is extended to cover not only working capital but also to provide financing for investment.

Below you will find a non-exhaustive list of possible solutions, which could help managing authorities to decide on the most appropriate amendment or procurement procedure in a

context of financial instruments. The options available to managing authorities planning to amend an existing financial instrument operation or set up a new one, would depend on what type of body implements the financial instrument, what is covered by already existing public procurement contract (if a financial instrument already is in place) and the type of financial instruments. It is important to note from the outset that modifications of public procurement contract should ensure the proper execution pertaining to the original overall nature, and not to answer to needs of new services. For such new needs, new public procurement procedures need to be followed unless other exceptions apply.

#### 1. **direct award to public financial institutions or EIB/EIF/IFI**

There are certain flexibilities already in place.

For all types of financial products, managing authorities already have the possibility **to award contracts directly** to a body implementing financial instruments supported through the ESI Funds either if such body is the EIB/EIF/IFI (and thus falls outside public procurement rules) or based on the exceptions of the Public Procurement Directive 2014/24/EU, including its Article 12, as further clarified in the Omnibus Regulation through Article 38(4)(b) CPR.

In such situations, the increase of the existing contract value (if you decide to top-up the existing financial instrument) can be made according to the conditions of the contract and no further restrictions would apply.

#### 1. **selection of commercial banks for guarantee instruments**

For guarantee instruments, the selection by the guarantor (who is a contracting authority) of commercial banks providing loans **does not fall under the scope of the public procurement directive** if the following conditions are fulfilled cumulatively:

- there is absence of a service provided to the contracting authority in the meaning of the Public Procurement Directive, and therefore the non-applicability of Public Procurement Directive stems from the fact that the contracting authority, e.g. a **national promotional banks/institution** (NPB/NPI) does not purchase a clearly defined service, e.g. when it provides a guarantee to all banks as a **form of subsidy** to the banks;
- the concerned guarantee is given or even sold to the commercial banks in order to facilitate and incentivise the granting of loans to final recipients **in line with their normal lending procedures**, meaning that the contracting authority **does not impose any additional obligations** with regards to the eligibility of lending conditions or of potential borrowers;
- there is no mandatory (range of) target amount of lending or other enforceable obligation of result; for example, no sanctions or repercussions are provided for with regards the commercial banks in case the targeted amount of loans is not issued/achieved.

For guarantee instruments, when the selection of the commercial bank is done by the final recipient, before or after the latter has requested and received a guarantee from the Guarantee Fund manager (e.g. NPBI that is also a contracting authority) then, such selection **does not fall under the scope of the public procurement directive**, because it is not done by the NPBI but rather by the final recipient. Therefore, it is clear that there is no

service performed for the NPBI because the NPBIs and the commercial banks are not in any form of direct relationship.

#### 1. **Possibility to modify the contract under Article 72 PPD.**

We should differentiate between two types of situations:

- if the modifications would concern adding a new subject matter, then such modifications are subject to public procurements rules; the different possibilities outlined in the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis, most notably accelerated procedure and negotiated procedure without publication, are possible when properly justified.
- if the subject matter/overall nature of the contract remains the same, then:
  1. Article 72(1)(a) could be used provided that such an option, e.g. to “top-up”, irrespective of its monetary value, was included in the initial procurement documents (this means already from the publication, in the procurement documents and not just in the contract) defined specifically in *clear, precise and unequivocal review clauses*, which may include price revision clauses, or options. Such clauses must state the scope and nature of possible modifications or options as well as the conditions under which they may be used, or
  2. Article 72(1)(b) could be used by a contracting authority provided the latter could justify both that the additional services have become necessary and that a change of a contractor cannot be made. “Additional services” does not mean ‘new’ rather it means ‘more’ (of the same type of) services.”
  3. Article 72(1)(c) could be used, provided that the contracting authority demonstrates that the need for modification has been brought about by circumstances which a diligent contracting authority *could not foresee* and the increase in price related to such extension, is not higher than 50% of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive.

In the view of the Commission, in the case that **if the original contract covered only support in the form of working capital**, then an increase in the value would not change the subject matter. If the contract covered both the subjects of working capital and another subject matter such as financing of investments, then the conditions for the modification must not change which element would be the main subject.

On the contrary, as explained above, if the original contract did not cover support in the form of working capital at all, then the subject matter would be considered as new and therefore cannot be introduced in the contract by way of modification.

However, all the above possibilities need to be examined on a case-by-case basis.

#### 1. **Using accelerated procedure to sign new contracts for new amounts.**

If the options discussed above are not possible, the fastest way to sign new contracts for new amounts would be the accelerated open procedure under Article 27(3) of the Public Procurement Directive which allows to have the contracts signed within one month as the time frame for the bidders is reduced to 15 days from the date on which the contract notice was sent. Use of this procedure requires checking the fulfilment of the conditions therein.

<b>DE</b>	Can existing financial instruments be amended in a way to include the support of working capital? Does this require a formal programme amendment? Does this require an additional ex-ante assessment for the amended FI?
<b>SK</b>	Statement that the free-of-charge guarantees (for the beneficiary) do not have to be subject of procurement (while SK believes that everyone is of this opinion, they would need a paper stating so to be able to avoid procurement which is extremely lengthy).
<b>BG</b>	Consider possibility under Directive 24/2014 and, respectively the local public procurement law to allow an exception for selection of financial intermediaries without PPA procedure
<b>SI</b>	Due to the fact that existing FI operation consists also of measures for SME and due to urgency of the matter, would it be possible to engage/redirect also existing FI (also from areas like energy efficiency) instruments to SME support (working capital) before CPR, OP amendment and modification of operation – all of this would be done ex post?

Payments to financial instruments with several specific funds

We understand that according to the current set-up of the financial instrument, the managing authority requests the first and subsequent interim payment on the basis of the funding agreement signed with the body implementing the fund of funds. We also understand that the operational choice of the fund of funds is to disburse the programme resources paid to the fund of fund further to the specific product funds irrespective of the progress (this is opposite to keeping the amount of resources at the level of the fund of funds to cover the financial needs of faster implementing financial instruments).

This decision on the operational structure is made by the national authorities and **it can be adjusted during implementation** if due to the crisis or to any other reason the current structure no longer fits the purpose. The managing authority could in particular restructure the financial instrument from the current single fund of funds structure into a number of instruments. This would make it possible to channel funds in line with the individualised investment needs in each of such instruments (as the thresholds for the second and subsequent tranches would apply independently for each of such instruments). This would be in line with the provisions of Article 41(1)(c) CPR which refer back to the thresholds to be applied on the “amounts included in the first application for interim payments” or “previous applications”. The funding agreements would need to be modified accordingly, but this should not have any impact on deployment on the ground and, if the first tranche had been distributed proportionally among such instruments, without any need to do any financial adjustments as regards the already transferred first tranche.

If the managing authority prefers to retain the current structure with the fund of funds, it may contribute additional resources from the prefinancing received from the UE budget for

the programme to the fund of funds to pay to the well performing financial instrument to incur eligible expenditure in order to reach the required threshold and to de-block the possibility to claim the next tranche according to Article 41(1)(c) CPR.

<b>SK</b>	The possibility to declare expenditure at the level of instrument or priority for a tranching. That would release the cash problems SK has. Currently there is a number of instruments blocked due to the impossibility of tranching at the level of instrument/tranching. In the current situation, too much energy and time is spend on reallocating the money around due to the blockages caused by a few slow instruments.
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Completed operations for financial instruments/refinancing

As regards support for fully implemented or physically completed operations:

The derogation to Article 65(6) CPR introduced by the proposed Article 25a(7) CPR is applicable to all operations, including financial instrument (FI) operations. We recall, however, the definition of such FI operations in Article 2(9) CPR, which refers to the programme contribution from the managing authority to the financial instrument and subsequent cascaded down to the final recipient support.

[Regulation \(EU\) 2020/558 \(CRII+\)](#) introduced the amendment (Article 25a(7) CPR) that Article 65(6) CPR does not apply to **operations for fostering crisis response capacities in the context of the COVID-19 outbreak**, i.e. allowing to select and thus fund operations retrospectively. Article 65(10) CPR (as amended by [Regulation \(EU\) 2020/460 \(CRII\)](#)) provides that expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020.

Considering that Article 65(6) CPR introduces a general principle throughout the CPR against retroactive operations, i.e. selection of operations that have already been fully implemented or physically completed when the beneficiary submits the application for funding to the managing authority, that does not exclude explicitly any forms of support, such as financial instruments; and considering that Article 37(5)[1] CPR is not drafted as a derogation from Article 65(6) CPR, we view it as a clarifying provision indeed. In such case, the amendment introduced by the CRII+ Regulation should apply *mutatis mutandis* to financial instrument operations, too. Thus, for FI operations fostering crisis response capacities in the context of the COVID-19 outbreak, Article 37(5) CPR should not apply. Consequently, provided that such investments fostered/continue to foster crisis response capacities in the context of the COVID-19 outbreak, they could be selected, even if the investments that are to be supported through financial instruments are physically completed or fully implemented at the date of the investment decision, i.e. retroactively as from 24 April 2020, when the CRII+ Regulation entered into force. Expenditure for such operations fostering crisis response capacities may be eligible as from 1 February 2020.

Where the said investments are COVID-19 relevant research and development, investment aid for testing and upscaling infrastructures, investment aid for the production of COVID-19 relevant products, for which support is found to be State aid under the Temporary Framework, they cannot be financed if already fully implemented. If started before 1 February 2020 and not completed, they can get support in compliance with the specific conditions of sections 3.6, 3.7 and 3.8 of the Temporary Framework.

As regards **refinancing**:

The CPR does not envisage the possibility of supporting the refinancing of existing loans for the following reasons:

It follows from Article 37(1) CPR that financial instruments should be implemented to support investments which are expected to be financially viable and do not give rise to sufficient funding from market sources, therefore justifying the need for public intervention. The existence of an initial loan proves the existence of sufficient funding from market sources for carrying out the investment. Therefore, an ESIF programme loan refinancing an existing loan (or an ESIF programme guarantee for an existing loan) is not justified.

Only in the situation set out in Article 37(6) CPR, the reorganisation of a debt portfolio in certain infrastructure investments is considered possible.

In addition, Article 42(1)(b) CPR refers to resources committed to guarantee contracts covering a multiple amount of underlying new loans for new investments in final recipients.

From the State aid perspective, the refinancing of existing loans is not excluded in the current circumstances in the case of aid in the form of guarantees of loans, or guarantees and loans channelled through financial intermediaries under the Temporary Framework, provided the conditions foreseen in sections 3.2, 3.3 and 3.4 of the Temporary Framework are complied with.

However, as a result of the combined reading of the amendments in paragraph (10) and (6) of Article 65 CPR, introduced by the CRII and CRII+ respectively, refinancing is possible under the following conditions to be cumulatively fulfilled:

- the ESIF-financed guarantee is provided to an underlying (modified existing or new) loan, as a necessary temporary measure to provide an effective response to a public health crisis,
- the guarantee contract allowing for refinancing has to be signed starting with 1 February 2020. The date of signature of such guarantee contract is the starting date for the calculation of the eligibility of expenditure for guarantee contracts in line with Article 42(1)(b) CPR and Article 8 CDR;
- the FIs are set up under the TF or *de minimis* Regulation (please note that you can have one FI set up based on the two frameworks in parallel). Undertakings in difficulty defined as eligible by the Temporary Framework are eligible for ERDF support, but for schemes under *de minimis*, the exclusion of insolvent undertakings continues to apply (Article 4(3)(a) and (6)(a) *de minimis* Regulation), or under the EAFRD Regulation as further extended by the possibilities laid down in the amended CPR;
- the initial loan was not supported by EU as it would constitute double financing.

[1] Article 37(5) CPR provides that investments that are to be supported through financial instruments should not be physically completed or fully implemented at the date of the investment decision.

<b>RO</b>	We understand eligibility of expenditure would be exceptionally allowed for completed or fully implemented operations. Could you please kindly confirm if this <u>applies also to financial instruments</u> , by reference to Article 37(5) of the CPR? If yes, we would also like to better understand what would be the <u>interaction between temporarily allowing support for completed or fully implemented operations with refinancing of existing loans?</u>
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## Undertakings in difficulty in financial instruments under de minimis regulations

The *de minimis* Commission Regulations are not affected by the CRII or the CRII+ or by the Temporary Framework on State aid in the context of the COVID-19 outbreak, as amended. They continue to apply in their entirety. Hence, the exclusion of insolvent undertakings, provided for in Article 4(6) of the *de minimis* Regulation continues to apply to ESIF-funded financial instruments (FIs), such as guarantee instruments, including the SME Initiative guarantee option, implemented under the *de minimis* rules.

However, the amendment to Article 3(3) of the ERDF Regulation introduced with CRII+ results in Member States being able to finance, through ERDF-funded financial instruments (including the SME Initiative), also undertakings in difficulty, including under the *de minimis* rules, provided that Article 4(6) is complied with.

Therefore, the solution lays in opening the SME Initiative up to other legal bases of State aid clearance, meaning other than *de minimis*. For example, the SME Initiative could be implemented under the Temporary Framework, which treats undertakings in difficulty due to COVID-19 outbreak as eligible to receive temporary aid, provided they were not already in difficulty on 31 December 2019<sup>[1]</sup>.

In accordance with Article 108(3)(c) TFEU State aid measures to be implemented under the Temporary Framework have to be notified by Member States. Note should be made that the Commission will ensure fast assessment and adoption of compatible aid measures under the Temporary framework.

[1] The first amendment of the Temporary Framework, adopted on 3/04/2020, simplified the reference to undertakings in difficulties initially inserted in the TF, for the sake of clarity.

<b>RO</b>	We understand that undertakings receiving support complying with the State aid Temporary Framework or <i>de minimis</i> Regulations [1407/2013, 1408/2013 and 717/2014] would not be regarded as undertakings in difficulty for the purposes of this eligibility point. However to receive aid complying with the existing <i>de minimis</i> rules, a beneficiary cannot be subject to collective insolvency proceedings, or fulfilling the criteria under its domestic law for being placed in collective insolvency proceedings (Articles 4(3)(a) and 4(6)(b)). As such, may we kindly ask you to clarify if in order to ensure consistency between the Temporary Framework in the current COVID-19 outbreak and the <i>de minimis</i> Regulation, <u>ERDF support under <i>de minimis</i> may be also without the limitation of Articles 4(3)(a) and 4(6)(b) mentioned above?</u>
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## First loss portfolio guarantees

First loss portfolio guarantees could be implemented as a financial instrument operation under the CPR rules. As such schemes provide for differentiated treatment of investors, they would have to be in line with, among others, Article 43a CPR.

Differentiated treatment of private investors (or public investors operating under the market economy principle) should be also in line with State aid rules. In particular, when granted under section 3.2 of the [amended Temporary Framework](#) for State aid measures to support the economy in the current COVID-19 outbreak, the duration of such guarantee should be limited, as a general rule, to 6 years and the public guarantee should not exceed 35% of the loan principal.

Such schemes can be also implemented under Article 39 CPR (SME Initiative) or Article 39a (combination ESIF - EIB products under EFSI) CPR. Such option is possible also for Member States that have not made use of these provisions previously.

As regards the need and scope for an ex ante assessment in line with Article 37(2) – see reply *Ex ante assessment and need for programme amendments when working capital is added* (section 3 and 4). In its second proposal under the CRII, the Commission has proposed to amend Article 37(2)(g) CPR so no review or update of the ex-ante assessments would be required, where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak. In any event, such review/updates should not delay deployment on the ground if the approach for preparation of a very focused document, in line with the reply referred in the beginning of this paragraph, is followed.

<b>EL</b>	Possibility to finance from ERDF: Scheme for first loss portfolio guarantee on working capital of SMEs
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#### Amending existing financial instruments

Existing financial instruments could be updated to extend their scope and to include previously excluded support for working capital purposes or interest rate subsidies. This could be achieved through introduction of new products (e.g. a grant (interest rate subsidy) combined with a loan in a single financial instrument operation), or by modification/extension of the existing products to cover such new form/scope of support.

The legislative framework for the implementation of ESIF-financed programmes remains fully applicable, however, even under the current exceptional circumstances. Therefore, the national authorities, when adjusting the ongoing operations, always have to ensure compliance with existing rules, including, among others, with public procurement.

In line with amended Article 37(2)(g) CPR no review or update of the ex-ante assessments is required if the amendment of an existing FI takes place in the context of taking measures to respond to the current public health crisis.

<b>EL</b>	Possibility to finance from ERDF: Scheme for subsidised interest rate on working capital loans to SMEs: up to EUR 1 billion, ERDF, to be included in existing FI
<b>DE</b>	Can existing financial instruments be amended in a way to include the support of working capital? Does this require a formal programme amendment? Does this require an additional ex-ante assessment for the amended FI?

#### Business plans (Article 25a(11))

The first paragraph of Article 25a(11) CPR introduced by [Regulation \(EU\) 2020/558](#) combines in one provision a derogation from two requirements: (1) for “*new or updated business plans or equivalent documents*” and (2) for “*evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as part of the supporting documents*”. Therefore, it concerns both types of business plans referred to in applicable legislative framework:

- business plans or equivalent documents referred to in point 1(b) and 2(b) of Annex IV to the CPR, which form part of the funding agreement; and

- supporting documents submitted by the final recipients (enterprises), namely business plans referred to in Article 9(1)(e)(vii) of [Commission Delegated Regulation 480/2014](#), and evidence that the support provided through the financial instrument was used for its intended purpose referred to in Article 9(1)(e)(xi) of the said regulation.

<b>EE</b>	Article 25a (point 11) of CPR: whose business plans, equivalent documents and evidence does this concern – of the financial instrument (as defined in the funding agreement) or of the final beneficiary (enterprise)?
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Working capital – compliance with first subparagraph of Article 37(4)

The second subparagraph of the amended Article 37(4) CPR provides that financial instruments “*may **also** provide support in the form of working capital to SMEs if necessary as a temporary measure to provide an effective response to a public health crisis*”. The amended provision provides additional flexibility to the scope defined in the second sentence of the first sub-paragraph.

The new sub-paragraph of the amendment is not a requirement in addition to those referred to in the first sentence of the first sub-paragraph of Article 37(4) CPR, which clearly sets out the targeted activities for which ESI Funds may provide financing to enterprises. Indeed, as clarified in the second and third sentences of the first sub-paragraph of Article 37(4) CPR, the ESI Funds may be used for any of such targeted activities, e.g. strengthening the general activities of the enterprise, including *through* investments in tangible/intangible assets, transfer of proprietary rights and working capital support. The second sentence of the first sub-paragraph of Article 37(4) CPR further clarifies that when the support is provided through working capital then such support must be in line with the limits of applicable State aid rules and with a view to stimulating financing from the private sector too. The amended new sub-paragraph does not extend the scope of support beyond what has already been covered under the first sub-paragraph, but makes justification of support for working capital to SMEs easier in the context of the public health crisis, especially in the context of short-term working capital support (see reply on ‘Time limits on working capital transactions’).

The Commission does not find it necessary to amend the guidelines on working capital ([EGESIF\\_14\\_0041-1](#)) as they seem to already provide very flexible framework, and accompanied by the additional explanation in this and other replies could be used effectively to design crisis-related measures.

<b>EE</b>	<p>Under Article 37(4) CPR, ESIF programmes' support to enterprises delivered through FIs has to target at least one of the following: establishment of new enterprises, early-stage capital (i.e. seed capital and start-up capital), expansion capital, capital for the strengthening of the general activities of an enterprise, realisation of new projects, penetration of new markets or new developments by existing enterprises.</p> <p>Does this requirement not apply in the case of working capital (in line with the amendment in the first CRII package in Article 37(4)? Will the Commission also amend its relevant <a href="#">guidance</a>?</p>
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Supporting documents for requesting a subsequent tranche

The derogation in the first paragraph of Article 25a(11) CPR will simplify verifications needed before a request for a subsequent tranche of advance is made for a financial

instrument, by not requiring any "new or updated business plans or equivalent documents and evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as **part of** the supporting documents".

However:

- the simplified approach would apply only in relation to support in the form of working capital to SMEs pursuant to the second subparagraph of the amended Article 37(4) CPR (inserted by the [CRII Regulation](#)), i.e. when necessary as a temporary measure to provide an effective response to a public health crisis;
- the other requirements under the CPR (e.g. Article 40(1) on the verifications to be carried out and Article 42 on the eligibility of expenditure) and under Commission Delegated Regulation (EU) No 480/2014 (CDR) remain in force; in particular, other supporting documents proving that the final recipient is an eligible SME and that the financial flow of the support indeed reached the final recipient (e.g. the loan was actually disbursed) need to be checked (see Article 9 CDR).

The [CRII](#) and [CRII Plus](#) Regulations do not introduce any modification in Article 41 CPR related to the payments by the Commission to the Member State which have to continue to be done in tranches as stipulated in this Article. Nevertheless, as some control obligations are simplified, this may facilitate the achievement of the requested thresholds.

We recall that Article 41 CPR applies only to the relation between the Commission and the Member State and not between the managing authority and the fund manager. The Commission recommends that the managing authority in its contractual relation with the body implementing the financial instrument in question also applies a correspondingly phased payment schedule, but other payment schedules can be contractually established (at national/regional level). For liquidity purposes, the Member State may also use the amounts not recovered in line with the amended Article 139(7) CPR (introduced by the [CRII](#) Regulation) to provide the support to such financial instrument operations before the subsequent tranches are requested and in this way address the unlikely shortfall.

Please note that you can only start counting expenditure towards the threshold for the subsequent tranches of advance established in Article 41(1)(c) CPR **from the moment the support is indeed provided at the final recipient level** (e.g. the loan is actually disbursed), without any need to provide specific proof of the use of the support by the SME (which might not be needed or which might happen later). This rule applies generally, i.e. outside the context of COVID-related support under the new second sub-paragraph of Article 37(4) CPR as well.

**FR**

La CRII+ permet l'exonération de pièces justificatives permettant de s'assurer de l'utilisation du soutien par le biais d'IF au sein d'une entreprise.

Or, pour le soutien via un instrument financier, l'autorité de gestion doit verser ses financements par tranche de 25%, sur la base des dépenses réelles et sur présentation des justificatifs de paiement auprès des entreprises.

**Vu l'absence d'obligation de justificatifs auprès des entreprises, est-il possible d'envisager non plus un versement par tranche de 25%, mais en une fois ou selon le calendrier de financement fixé par l'autorité de gestion ?**

Cette modification serait essentielle pour promouvoir la pleine efficacité des instruments financiers et d'éviter que l'épidémie de COVID 19 ne se transforme en

	<p>crise économique à long terme.</p> <p>CRII + allows for the exemption of supporting documents to ensure the use of support through FI within an enterprise.</p> <p>However, for support via a financial instrument, the managing authority must make its payments through instalments of 25%, on the basis of actual expenditure and on presentation of supporting documents of payment to companies.</p> <p><b>Given the absence of an obligation for enterprises to provide evidence, is it possible to consider that the payment through instalments of 25% can be replaced by a single payment or by payments made according to a calendar set by the MA?</b></p> <p>This possibility would greatly improve the use of CRII + funds and allow for an immediate and full response to the liquidity needs of the beneficiary companies.</p>
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Support for affected SMEs after crisis

The derogation from the requirement of Article 37(2)(g) CPR to review or update ex-ante assessment for financial instruments in Article 25a(10) applies when "*changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak*". No time limits are set in this provision and as long as this is in line with the other applicable rules, including State aid, support for restoring or strengthening business growth during the longer period where the effects of crisis persist, is clearly eligible and covered by this provision. This derogation applies to all ESIF financial instruments implemented in accordance with Article 37(2) CPR.

The derogation from the requirements to prepare a new or updated business plans or equivalent documents and to ensure evidence allowing verification that the support provided through the financial instruments was used for its intended purpose applies only in relation to the new second sub-paragraph of Article 37(4) CPR i.e. **only when the financial support is provided "in the form of working capital to SMEs pursuant to the second subparagraph of Article 37(4) CPR"** (inserted by the [CRII Regulation](#)), i.e. **where necessary as a temporary measure to provide an effective response to a public health crisis**. What is considered 'temporary' should be defined in national rules providing that such measure contributes to making the response effective. It is not excluded that working capital support would enable SMEs to address their post-crisis needs, but if financing is not provided for working capital needs in the context of the COVID-19 crisis (under the new second sub-paragraph of 37(4)), then the proposed derogation provided by Article 25a(10) CPR would not apply.

Even if the derogation provided by Article 25a(10) CPR does not apply, it is still possible that no updated ex-ante assessment might be needed for the financial instruments which already provided working capital support before the crisis. However, this needs to be assessed case by case in line with the principles outlined in reply on "Ex ante assessment and need for programme amendments when working capital is added". As regards business plans, if a financial instrument supports financing to enterprises for business growth in the longer term (i.e. for expansion capital or capital for the strengthening of the general activities of an enterprise, or any other targeted activity under the first sentence of the first sub-paragraph of Article 37(4) CPR), then a new/updated business plan would be

required. See reply on “SMEs: investment costs and operating costs after implementation phase” for more details.

Please note that you can also provide financing which combines support for the crisis-linked working capital with support for investments or for other types of working capital (e.g. strengthening of the general activities of an enterprise) beyond the impact of the crisis. Such support for investments **could already be eligible under first paragraph of Article 37(4) CPR and Article 3 ERDF Regulation**, e.g. as productive investments in SMEs (Article 3(1)(a) ERDF Regulation) or investments in business infrastructure (Article 3(1)(d) ERDF Regulation) and may already be covered by existing ex ante assessments and business plans.

<b>UK</b>	<p>There is an exemption now in place for the requirement to review and update ex-ante assessments and business plans, where financial instruments are adjusted to effectively address the public health crisis. The proposed regulation suggests that this exemption could only be used where immediate support in the form of short term working capital is being provided in response to the crisis. The EC announcement on 2 April implies the possibility of further relaxation.</p> <p><b>Clarity would be welcomed on whether this could also apply to slightly longer term plans for a fund to support business growth, post crisis, but for SME’s directly affected by COVID 19.</b></p>
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## **Programme amendments**

Meaning of “priority”

The word “priority” should be understood as “priority axis” in the context of the cohesion policy. In accordance with Article 2(8) CPR, “priority” means “priority axis” for ERDF, ESF and the Cohesion Fund in Part Two and Four of the CPR. Article 30 CPR is in Part Two.

<b>CZ</b>	<p>With respect to Art. 2, para 1 of the CRII regulation, how exactly should we interpret the word “priority” - is it a priority axis or investment priority? It does not have the same meaning in the context of the operational program OP EIC (Enterprise and Innovations for Competitiveness) and it is crucial to meet the limits. The Common Provisions Regulation (CPR) usually works with the concept of priority axis, and the financial tables of OP EIC are set accordingly.</p>
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Programme amendment

The possibility to submit a request for an amendment of a programme in accordance with Article 30(1) CPR, remains available to the MS. I.e. it is always possible to request a “standard revision” of the OP, subject to approval of the monitoring committee in accordance with Article 110(2)(e) CPR, and of the Commission in accordance with Article 30(2) CPR.

The flexibility offered to re-programme without Commission decision (by Article 30(5)CPR from the Commission proposal COM(2020) 113) can be used in case the MS quickly needs to shift the funds within the limits laid down in the proposed provision. Meanwhile, the MS can prepare an amendment request on the elements reaching beyond the scope of the proposed Article 30(5)CPR.

It should be noted that the procedure in Art 30(5) only applies to the ERDF, ESF and CF; the EMFF has its own simplified procedure.

<b>CZ</b>	Does the adoption of the CRII mean that besides this simplified revision method it is not advisable/possible to make a standard revision of the OP? For example, would it be possible to make a revision that would exceed the set limits, deal with the OP text/wording, etc.?
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Ex ante assessment and need for programme amendments when working capital is added

Support for working capital can be provided either under an existing priority axis or through a new priority axis, including under a dedicated priority axis for the SME Initiative implemented in line with Article 39 CPR.

Such support can be provided in the form of a financial instrument (existing or only to be set up), repayable assistance or a grant.

The steps to be taken depend on the already existing support and specific priority axis, hence the reply:

- first addresses the conditions under which an OP amendment might be required,
- then discusses the different form of financing which could be used to support working capital,
- and in the end provides suggestions how to approach support in the form of financial instruments in 2 situations:
- where the financial instruments already supports working capital and the *ex ante* assessment already has been conducted;
- for financial instruments which are going to be set-up, or which already exist but need to refocus their scope of support to add working capital.

Only certain aspects of OP amendment procedures, linked to **timing of submission needed to ensure eligibility of the new scope introduced by such amendment**, are discussed here. For more specific questions concerning amendments, Article 30(5) as well as issues related to retrospective financing, please refer to specific replies on those topics.

### **1) Conditions under which an OP amendment might be required**

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there might not be any need to modify the OP, but this needs to be verified in each specific case as programme-specific conditions might require extending the scope of support in order to cover such new actions. Working capital does not have to be mentioned explicitly to be eligible, but should fit into the scope of priority axes and types of projects.

In case the programme needs to be amended to extend eligibility to cover the new scope, expenditure for operations fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020. This also applies to working capital granted to SMEs to provide an effective response to a public health crisis. The necessary programme amendment may be adopted later, without delaying deployment of measures.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this needs to be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. Neither working capital nor the

specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible from 1 January 2014.

In case the programme needs to be amended to extend eligibility to cover the working capital, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to the public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.

## 2) General rules depending on the form of support for working capital

The proposed new provision in Article 3(1) ERDF Regulation makes it possible to support working capital using all forms of financing:

- **For financial instruments** : financing of working capital in SMEs in the form of financial instruments has been eligible for support from the beginning of the 2014-2020 period.

Hence, if the additional support in response to the current crisis is to be provided under the same priority axis where financial instruments supporting SMEs, including with working capital, have been already envisaged, no OP amendment would be needed , unless the priority axis includes conditions restricting such support which would be now proposed to be relaxed in response to the COVID-19 crisis.

In some cases however, an **updated or new ex ante assessment** in line with Article 37(2) CPR could still be needed to estimate the level and scope of public investment *before* the managing authority takes the formal decision to make additional programme contributions to the financial instrument. This requirement should not delay deployment: such an analysis should be very focused and short in length and it does not have to be outsourced. It could be conducted by a competent public authority and could refer to national and EU documents already being published in a broader context, which already provide key elements to justify market failure and the current COVID-19 crisis situation. Managing authorities could also use national promotional banks or institutions and already functional fund of funds managers to draft such new/updated ex ante assessment. Specific rules would be applicable in case of the SME Initiative implemented under Article 39 CPR.

Funding agreements/investment strategies may be adjusted as necessary to allow a potential re-focus of the existing FI (if not covered already) to address the investments needed to respond to the crisis (funding agreements might already include provisions which would trigger revisions of investment strategies in case of situations like this).

- **For grants and repayable assistance** : Selection criteria would need to be approved by the monitoring committee. For grants/repayable assistance, there is no legal basis for a requirement to prepare an ex ante assessment within the meaning of Article 37(2) CPR.

Please note that the modification does not affect EAFRD, where working capital remains eligible only in relation to investments supported by the rural development programmes, in accordance with Article 45(5) of Regulation 1305/2013.

## 3) Financial instruments that already support working capital



For existing financial instrument already providing support for working capital, changes in ex ante assessment should be introduced only if really needed, be as short as possible and concern only those elements that h are significantly modified. There is no need to update every part of the ex-ante assessment if in the past it was already justifying supporting working capital.

The focus should be on the investment strategy and the *ex ante* assessment should be updated only if/as needed, based on the results of the review of investment strategy, without producing any additional documents.

The process of the **update** could follow the following path:

- Discuss with the body implementing the financial instrument (e.g. national promotional institution/EIB/EIF), which the identified needs are on the market responding to the public health crisis and whether the current financial instrument can responds to these needs in terms of volume and strategy;
- If the needs are no longer met in terms of volume, and you decide to provide additional financing, this is the basis for short amendment to the ex-ante assessment and taking the formal decision to contribute more funds in line with Article 37(3) CPR;
- If the volume is not changed, but the specific market needs require an adjustment in terms of the investment strategy, decide with the body implementing the financial instrument (e.g. national promotional institution/EIB/EIF) if/what needs to be changed. If significant elements of the investment strategy needs to be changed, it may be necessary to update the ex-ante and/or amend the OP (e.g. if support in the form of grants is also needed). If there is only a need to change slightly the investment strategy, then there is no need to update the ex-ante assessment, nor to amend the OP.
- Finally, any changes resulting from the decisions made under points 2) and 3) are introduced in the funding agreement and subsequently in the (loan/guarantee/etc.) relevant agreements downstream between the body implementing the financial instrument and any specific funds, if needed.

#### **4) Financial instruments that need to be set-up or re-focused on working capital.**

In case of new financial instruments to be set-up as a response to the public health crisis or of existing financial instruments that need to be re-focused, an ex ante assessment in line with Article 37(2) CPR is needed to estimate the level and scope of public investment in regard to the public health crisis, before the managing authority takes the formal decision to make programme contributions to the financial instrument.

However, this requirement should not delay deployment: such an analysis should be very targeted and brief and it does not need to be outsourced.

The following table includes a short description of how to fulfil the requirements for every element required under Article 37(2) CPR. The focus, as in the case of existing financial instruments, should be on the proposed investment strategy referred to in Article 37(2)(e).

<b>Element of ex ante assessment required under Article 37(2)</b>		<b>How to address</b>
a)	an analysis of market failures, suboptimal investment situations, and investment	It is sufficient to refer to refer to Commission’s communication

<b>Element of ex ante assessment required under Article 37(2)</b>	<b>How to address</b>
<p>needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology</p>	<p><i>'Coordinated economic response to the COVID-19 Outbreak'</i> COM(2020) 112 final</p>
<p>b) an assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion</p>	<p>It is sufficient to refer to Commission's communication <i>'Coordinated economic response to the COVID-19 Outbreak'</i> COM(2020) 112 final</p>
<p>c) an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and the extent of, differentiated treatment as referred to in Article 43a to attract counterpart resources from investors operating under the market economy principle and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment, such as a competitive or appropriately independent assessment process</p>	<p>Unless differentiated treatment of investors is needed, a conservative own estimate is sufficient; given the current constantly changing situation and uncertain overall economic outlook accurate estimates are not possible. This element is non-binding and could be later updated in line with market developments.</p>
<p>d) an assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future</p>	<p>It is sufficient to invoke exceptional nature of the current crisis to justify lessons learned might not be applicable</p>
<p><b>e) the proposed investment strategy, including an examination of options</b></p>	<p><b>This should be the focus of the analysis and could be prepared with</b></p>

Element of ex ante assessment required under Article 37(2)	How to address
	<p><b>the body implementing the financial instrument or by another responsible public body. The document should avoid unnecessary details, given the uncertain situation and the investment strategy may be updated later anyway, without the need to change the <i>ex ante</i> assessment</b></p>
<p>f) a specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;</p>	<p>It is sufficient to specify that the expected result is ensuring sufficient liquidity for SMEs to address the losses due to the crisis (where applicable: with special attention on sectors which are particularly hard hit). Number of enterprises supported through financial instruments could be used as the required indicator.</p>
<p>g) provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation</p>	<p>Appropriate arrangements as decided by MA. Given the dynamically changing situation, the remaining part of the assessment should not include too many details to avoid too frequent revisions.</p>
<p><b>BG</b> <b>SI</b> <b>HR</b></p>	<p>Amendment of <b>Article 3(1) of the ERDF Regulation</b> to support pure working capital is part of the Commission proposals. <b>What steps are needed in order to implement working capital for SMEs?</b> Is an <b>OP modification required</b> or does this situation allow for quick deployment of measures and a <b>subsequent</b> OP modification? What about the <b>funding agreement / investment strategy?</b></p>
<p><b>CZ</b></p>	<p>If we <b>transfer</b> financial resources to a <b>financial instrument</b> to support the working capital – do we need to run a <b>new ex ante analysis?</b> (For the reply see sections 3 and 4.)</p>
<p><b>EE</b></p>	<p>The CPR requirement for <b>ex-ante assessment of financial instruments has not been modified</b>. Does this <b>apply also</b> in cases of working capital in a <b>crisis</b> context? If yes, please reconsider. (For the reply see sections 3 and 4.)</p>

<b>LT</b>	Concerning COM proposal to use financial instruments to finance working capital in SME's - will it be possible to derogate from requirements to do ex ante assessments on market gap analysis? Giving the extraordinary situation there would be only a time-consuming procedure with no value in it.
<b>PL</b>	FIs - does ex-ante assessment need to be updated? In our view this would be contradictory to the urgency of the matter and given that the eligibility scope is changing? (For the reply see sections 3 and 4.)
<b>PL</b>	The wording of the scope of the loan and guarantee funds in the OP. This would have to be modified in the text of the OP, which is rather cumbersome. We would propose an exchange of e-mails or letters confirming MA can go ahead with what they propose, and that the wording would be changed in the next OP modification. (For the reply see section 1.)
<b>SI</b>	Due to the fact that existing financial instrument operation consists also of measures for SMEs and due to urgency of the matter, would it be possible to engage/redirect also existing FI (also from areas like energy efficiency) instruments to SME support (working capital) before CPR, OP amendment and modification of operation – all of this would be done ex post? REGIO+ (ECFIN?) Member State must be able to implement the measures it deems necessary to combat the coronavirus. It is essential for the Commission to clarify the types of measures envisaged, particularly as regards aid to the SMEs which will be mainly affected. (For the reply see section 1)
<b>DE</b>	Can existing financial instruments be amended in a way to include the support of working capital? Does this require a formal programme amendment? Does this require an additional ex-ante assessment for the amended financial instrument?
<b>HU</b>	When launching a new working capital loan scheme under EDIOP Priority 8, should the scheme be supported by an ex-ante analysis or would it be sufficient for the Commission if we refer to the amendment of the CPR? Article 37(2) of the CPR sets out generally the requirement of an ex-ante analysis, before launching a new scheme. We have not found any exculpatory provision, that this measure should not be applied under the present circumstances. However, on the basis, and the reasons for amending CPR, and taking also into account, that this epidemic poses a significant risk to public health, we think it would not be realistic, if the Commission still maintains (expects) the general provision for ex-ante analysis. Preparing such an analysis could cause a delay of weeks, or months to the implementation, to the launching of the working capital loan. (For the reply see section 3 and 4)
<b>IT</b>	Given that the conditions for the failure of the market are self-demonstrated by the fact that the scope of the support is to cope with the health emergency, is it possible to foresee derogation to the obligation to carry out the ex-ante evaluation for financial instruments to be activated or modified for the implementation of measures related to the public health crisis? Does the Commission envisage to introduce simplified expenditure verification procedures in the use of financial instrument in this field? (For the reply: see section 3 and 4)
<b>DE</b>	Funding is allowed, if the programme already permits the financing of working

capital. If not, the programme has to be amended. Is it correct, that managing authorities do not have to wait for the approval of the programme amendment in order to implement the funding of working capital? (For the reply see section 1)

Does the SEA apply to the modifications of the operational programmes aiming to reallocate funding in response to the coronavirus crisis?

The question concerns the modification of EU co-funded programmes in order to reallocate funds for fighting the coronavirus health emergency, for instance to give support for SMEs to survive the crisis or to support health measures.

The SEA Directive contains a provision that covers emergency situations and that could be applied to the emergency situation of the coronavirus crisis. Article 3.8 of the SEA Directive lays down:

“The following plans and programmes are not subject to this Directive:

— plans and programmes the sole purpose of which is to serve national defence or **civil emergency**,”

Civil emergency can be understood as including measures to address the coronavirus crisis. Hence, modifications of programmes introducing **solely** measures linked to coronavirus crisis could be exempted of the application of the SEA provisions. This means that modifications of programmes proposed later, once the coronavirus crisis is over, should not be covered by this derogation and should not be understood as civil emergency.

In that respect, the Coronavirus-crisis can be seen as a civil emergency within the meaning of Art. 3(8) of the SEA Directive, see also the Commission staff working document ‘Overview of Natural and Man-Made Disasters and Risks the European Union may face’, SWD(2017) 176 final, p. 33 on Pandemic. [https://ec.europa.eu/echo/sites/echo-site/files/swd\\_2017\\_176\\_overview\\_of\\_risks\\_2.pdf](https://ec.europa.eu/echo/sites/echo-site/files/swd_2017_176_overview_of_risks_2.pdf)

In addition, in line with what is indicated in the joint letter (attached) sent in 2011 by DG REGIO and DG ENV on the application of the SEA Directive to the modifications of the ESIF programmes, if a modification simply re-allocates funds to an existing measure or if a modification has already been covered by the SEA carried out for the original programme, such modifications should be treated as budgetary or financial modifications that do not affect or modify the physical content of the programme. The letter clarifies that for such modifications the SEA is not applicable and a statement of the managing authority is sufficient. In concrete terms, if the modification of a programme reallocates funds to existing measures/axis on SMEs, such a modification can be considered as budgetary or financial modifications and it does not require the application of the SEA Directive. I reattach the 2011 note on modifications of programmes for your information.

Consequently, the SEA Directive offers the necessary flexibility to respond to exceptional situations such as the Coronavirus crisis. In all cases, the managing authorities should explain clearly the reason/scope of the modifications.

<b>CZ</b>	Either not to have to run SEA or to enable to provide SEA screening additionally.
<b>SK</b>	Is it necessary to review changes to the OP, carried out in connection to COVID-19 prior to their approval in accordance with SEA Directive (or transposed Slovak legislation SR)?

Shifting to new period, overprogramming, obligatory character of investments

At first, it should be clarified that the use of both the reallocation of funds between priorities (proposed Art.30 (5) CPR) and eligibility of expenditure as of 1 February 2020 (proposed Art. (65(10) CPR) for COVID -19 investments is not mandatory; it is a flexibility provided to Member States to address, should they wish so, the COVID-19 outbreak. This means that Member States have the option of using or not the above flexibilities.

Second, there is no provision in the CPR forbidding over-programming; Member States could, in line with national rules, in the case of the EAFRD without prejudice to future fund-specific transitional rules, consider this possibility of taking into account the stage of implementation of operations already programmed or selected and currently under implementation.

For operations which are selected and for which grant agreements have already been signed, Member States may at a later stage reconsider their options depending on the stage of implementation of such operations: for example:

- it may be possible to phase these projects if they comply with the conditions for phasing in accordance with the rules of the 2021-2027 programming period as these will be further explained in the closure guidelines to be soon presented to Member States.
- It could also be possible that the operation can be split into two separate operations (thus not phased). In this case, the Member State could amend the operation in accordance with national rules so that the part of the operation completed is considered to be a standalone operation (of a reduced scope and funding), funded under 2014-2020 programming period, and the part non-completed supported under the 2021-2027 programming period. The operation transferred to the new programming period should comply with all applicable rules for the 2021-2027 programming period.
- In other cases, if operations were selected but were not implemented, it could be possible to transfer and support them under the 2021-2027 programming period provided that they are eligible for co - financing and comply with all applicable rules under the 2021-2027 programming period.

Finally, the specific provision of Art. 137(9) CPR only regulates the specific case of pre-financing amounts recoverable from the Member States. In such case, the additional liquidity should be used for the purpose of accelerating investments related to COVID-19 outbreak and eligible under Regulation (EU) No 1303/2013 and Fund specific rules.

<b>NL</b>	What does this mean for the running ESIF programmes? Especially in case programme budgets have already been fully committed to operations (as is the case for ESF)?
<b>FR</b>	Les régions qui ont déjà contractualisé la totalité de leur enveloppe 2014-2020 sont-elles éligibles au dispositif ? Pourront-elles sur-programmer ? (Are the regions which have already contracted the entire 2014-2020 envelope, eligible for the scheme? Will they be allowed to over-program?)
<b>DE</b>	How should the amendment to Article 139 (7) of Regulation (EU) No 1303/2013 be applied to operational programmes that have already been almost completely approved? If appropriations are already committed with legal force, they cannot be transferred to new investment priorities

<b>MS</b>	In case projects are shifted to 2021-27 in order to free resources for corona crisis measures, there are questions of eligibility related to the starting date of the new programmes.
<b>FR</b>	Dossier programmé et démarré en 2014-2020, mais non achevé en 2022, qui pourrait être rattaché et se terminer sur 2021-2027 ? Dossier programmé en 2014-2020, qui n'a pas pu démarrer en 2020, qui pourrait être directement rattaché à la programmation 2021-2027 ? Dossier déposé en 2020, éligible, mais pas sélectionné ni programmé, pour crédits insuffisants, qui pourrait être directement programmé en 2021-2027?

Reallocation between existing thematic objectives

There are two possibilities for reallocation between already existing thematic objectives (TO) under a programme:

- In the case of a programme where each priority corresponds to one TO, a reallocation between TOs implies a reallocation between priorities. e. such reallocation requires a programme amendment in accordance with Article 30(1) and (2) CPR but it does not require an immediate amendment.
- For priority axes, which combine investment priorities from different thematic objectives, the 2nd sub-paragraph of Article 96(2)(d)(ii) CPR requires that the amount of the total financial appropriation from each of the Funds and the national co-financing for each of the corresponding thematic objectives has to be specified in the programme. I.e. such changes would also require a programme amendment in accordance with Article 30(1) and (2) CPR. These can be also carried out at a later stage.

However, the new Article 30(5) CPR allows for a limited transfer between priorities, for which only a notification of the revised financial tables to the Commission via SFC is sufficient. In that respect, the corresponding reallocations between TOs, as a consequence of such amendments, can be done within the above mentioned notification and does not require approval by Commission decision.

**HU** In accordance with the general rules, reallocation within or between the thematic objectives can be handled with the amendment of the operational programme, following by the approval of the Commission. In order to facilitate reallocation the amendment of the CPR makes it possible, that the Member State may autonomously transfer during the programming period an amount of up to 8% of the allocation of a priority and no more than 4% of the programme budget to another priority of the same Fund of the same programme, and shall not require a decision of the Commission amending the programme.

In the case of EDIOP, we have a unique solution at EU level, for handling all financial instruments within one priority. Within this priority we have 5 thematic objectives. The amendment of the CPR explicitly has not provided specific measures for this situation. For that reason, we ask the Commission, whether it would be possible for the member state to reallocate the resources among the thematic objectives, within one priority on its own initiative. Should reallocation among the TO-s be possible on own initiative, we would like to ask whether

this facility is limited by an overall ceiling, or this provision of the CPR remains unchanged. That means, that the reallocation will be applicable only after Commission approval, and under the planned amendment of the OP.

**BG**

In case of allocation between two thematic objectives is the modification of the programme necessary as well as the approval by the Commission?

Justification for interlinked programme amendments

It is possible to finance technical assistance only from the Cohesion Fund (CF), as in line with Article 59(1a) CPR "*Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds*", as long as the amount does not exceed 10% of the total allocation for CF in line with Article 119(2) CPR.

The amendment would consist of 2 parallel amendments:

- CF amounts from non-TA priority or priorities would have to be transferred to the TA priority axis (priority 14 financed from CF);
- Corresponding ERDF amounts would be transferred from the TA priority axis (priority axis 13 financed from ERDF) to other ERDF priorities.

The transfers would have to respect the limits included in Article 30(5) CPR to be considered not substantial and not require any decision of the Commission. In particular, the transfer of ERDF amounts from the TA priority axis could not exceed 8% of the total allocation for the priority as of 1 February 2020, i.e. ca. EUR 5.5 million only. Hence, the intended purpose "*to finance technical assistance only from the Cohesion Fund*" would not have been achieved, as at least 92% of the amount from ERDF which was allocated to technical assistance would still have to be used for this purpose.

The intended shift could be done more effectively through a normal programme amendment procedure. There is no need to urgently submit a request to the Commission for amending the programme as, irrespectively of the date of submission of the amendment, the following applies:

- expenditure for operations for fostering crisis response capacities will be eligible as of 1 February 2020 (in line with proposed Article 65(10) CPR);
- on the technical assistance side, the TA priority axis financed from CF already has the same scope as the TA priority axis financed from ERDF. Hence, there is no new scope of expenditure that would become eligible only as a result of such an amendment and provisions of Article 65(9) CPR have no effect, with eligibility as before from 1 January 2014.

The amounts already certified in the accounts submitted to the Commission for the TA priority axis financed from ERDF can no longer be transferred. Therefore, only the TA amounts not yet included in the accounts should be in full declared under the TA priority axis financed from CF. This could continue to be done even if the allocation for the priority axis is exhausted. Programme amendment requests could be submitted later.

The proposed justification for both interlinked transfers (including that one of them "*is needed to make [the crisis measures] possible*" would be sufficient both in the context of the normal amendment procedure (justification under Article 30(1) CPR) and in the context of Article 30(5) CPR, which does not require such a direct link to the crisis.



**EE**

At the moment, Estonian technical assistance for the one and only Estonian multi-fund operational programme 2014EE16M3OP001 is financed from the ERDF as well as the Cohesion Fund at predetermined proportions. Would it be feasible to finance technical assistance only from the Cohesion Fund, moving more of the Cohesion Fund from other measures to technical assistance and redirect the ERDF funding released from technical assistance towards crisis measures? Would this be possible without a Commission decision, given that it includes two modifications of which one is directly towards crisis measures (and the other is needed to make this possible)?

#### COVID-19 related programme amendments

In view of the socioeconomic impacts of the COVID-19 outbreak, the European Commission made a series of proposals on 13 March 2020, within the Coronavirus Response Investment Initiative, to respond to the Member States' needs. The proposal to amend the CPR and the ERDF Regulation[1] was adopted by the co-legislators on 31 March 2020[2] and entails the following main changes affecting re-programming:

- A simplified procedure is introduced not requiring a Commission decision to transfer limited resources of the same Fund and same category of regions inside a programme (Article 30(5) CPR). (As regards re-programming requiring a decision, the Commission will work closely with the relevant authorities to accelerate the corresponding procedures.)
- Expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020 (Article 65(10) CPR).
- The European Regional Development Fund (ERDF) can newly cover working capital in small and medium-sized enterprises and investments in products and services necessary for fostering the crisis response capacities in public health services under the thematic objective to strengthen research, technological development and innovation[3].

On 2 April 2020, the Commission proposed a new set of measures to further amend the CPR and the ERDF Regulation (COM(2020)138) – which are part of the Coronavirus Response Investment Initiative Plus (CRII+). The new package complements an earlier initiative by introducing extraordinary flexibility to allow that all non-utilised support from ESI Funds can be mobilised to the fullest. This flexibility is provided, among others, through:

- transfer possibilities across the three cohesion policy funds (the European Regional Development Fund, the European Social Fund and the Cohesion Fund) but limited to the 2020 allocation (new Article 25a(2) CPR);
- transfers between the different categories of regions (new Article 25a(3) CPR);
- flexibility when it comes to thematic concentration for the 2020 allocation (new Article 25a(5) CPR);
- possibility to select physically completed or fully implemented operations fostering crisis response capacities before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary (new Article 25a(7) first subparagraph CPR);
- possibility to select operations fostering crisis response capacities, even prior to the approval of the necessary programme amendments (new Article 25a(7) second subparagraph CPR. Given the above amendment - new Article 25a(7) first subparagraph CPR - these operations can even be completed when they are selected;

- a 100% EU co-financing rate for cohesion policy programmes for the accounting year 2020-2021 (new Article 25a(1) CPR).

Furthermore the Commission has proposed that Partnership Agreements are no longer to be amended and that programme amendments do not entail the amendment of Partnership Agreements.

### **Practical impact on the re-programming process**

#### Derogations based on Article 30(5) and 65(10) CPR and new possibilities for investment under ERDF

Given the necessity to mobilise resources of the ESI Funds towards providing a quick and effective response to the public health crisis related to the COVID-19 outbreak, the CPR includes a new paragraph 5 in **Article 30**. According to this provision the Member State **may transfer** during the programming period an amount of up to 8% of the EU allocation (and the corresponding national co-financing) as of 1 February 2020 of a priority and no more than 4% of the total EU programme allocation (and the corresponding national co-financing) to another priority of the same Fund and category of regions of the same programme. Such transfers shifting Union and national resources across the priorities in the programme **do not require Commission approval**. It is sufficient to notify changes in the relevant financial tables of section 3 of the programme template to the Commission via SFC (i.e. tables 18a, 18c and 19). However, the relevant programme amendment has to be approved by the monitoring committee in advance. Moreover, these transfers cannot affect previous years and must comply with all regulatory requirements (*Note: According to COM(2020)138 - CRII+, the COVID-19 related amendments are proposed not to be subject to the requirements on thematic concentration for the 2020 allocation*).

In addition, there is a new **Article 65(10) CPR** allowing for a derogation from Article 65(9) CPR, whereby all expenditure for **operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020**.

This applies also to the activities covered by the amendment to the ERDF Regulation – the support for the investments necessary for strengthening the crisis response capacities in health services in Art. 5 of the ERDF Regulation and the financing of working capital for SMEs under Art. 3 of the ERDF Regulation (for the latter this is only relevant where the provision of such financing is not yet possible based on the existing programme).

In practice, Member States may identify already now the operations that fall within the scope of “fostering crisis response capacities in the context of the COVID-19 outbreak” and the related expenditure incurred and paid as of 1 February 2020 and later on. (*Note: COM(2020)138 - CRII+ proposes to derogate from Article 125(3)(b) CPR, allowing to select **operations** fostering crisis response capacities in the context of the COVID-19 outbreak **for support by the ERDF or the ESF prior to the approval of the amended programme***).

*In addition, COM(2020)138 - CRII+ proposes to introduce a derogation for such operations from Article 65(6) CPR, to allow the managing authority to select the operations for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.*

#### Process for programme amendments

When operations that fall within the scope of “fostering crisis response capacities in the context of the COVID-19 outbreak” are not covered by the scope of the operational programme(s) currently in force (e.g. types of actions, target groups, types of beneficiaries), the Member State has to take the following steps before including the corresponding expenditure in interim payment applications for the reimbursement by the Commission:

1) Keep track of these operations that could fall within the scope of “fostering crisis response capacities in the context of the COVID-19 outbreak” and ensure they comply with applicable law. It may not be possible to include expenditure linked to these operations in interim payment applications at this stage, because the content of the applicable programmes may not yet correspond to these operations (e.g. as regards types of actions, target groups, types of beneficiaries or guiding principles for selection of operations). Nevertheless it is important that MS ensure that these operations comply with applicable law relevant for the operation, in accordance with Article 125(3)(e) CPR (see also point 3) below).

2) The MS has to identify the impact of the “operations fostering crisis response capacities in the context of the COVID-19 outbreak” on the relevant programmes to prepare the necessary amendments. These amendments can fall into one of the three categories:

- a) amendments that concern elements of the programmes that have to be approved by a Commission decision – in this case the Member State should submit a request for programme amendment as required by Article 30(1) CPR, for example to include/modify relevant indicators, new thematic objectives, types of actions, main target groups, types of beneficiaries or guiding principles for the selection of operations etc. and the corresponding text of the programme. When processing these requests, the Commission will take into account their urgent character;
- b) transfers that fall under the flexibility provided under Article 30(5) CPR, i.e. the revised relevant financial tables (tables 18a, 18c and 19) under section 3 of the programme that must be notified to the Commission;
- c) amendments that concern other elements of the programme that are only notified to the Commission and thus remain under the responsibility of the Member State (e.g. changes to the categories of intervention<sup>[4]</sup>).

It would be possible that a MS made first the reallocation of Union and national resources between the priority axes within the limits allowed under Article 30(5) CPR. It could spend money where needed for beneficiaries and actions eligible under the current OP version. Then MS has to follow with an amendment to the operational programme under Article 30(1) CPR to include/amend the relevant elements linked to the “operations fostering crisis response capacities in the context of the COVID-19 outbreak”. *(Note: As mentioned above, COM(2020)138-CR11+ proposes a derogation from Art.125(3)(b) CPR and allows MS to select operations fostering crisis response capacities in the context of the COVID-19 outbreak prior to the approval of the amended programme. It should be noted that such operations could be selected but not reimbursed by the Commission until adoption of the amendment to the operational programme.)*

The newly amended CPR and the proposals under the CR11+ package do not introduce any changes to the procedural requirements for programme amendments under the CPR for the three categories of amendments set out above. The obligations for both the Commission and the MS remain the same. In this respect, all the above amendments will require an approval by the monitoring committee, pursuant to Article 110(2)(e) CPR, and a submission via SFC. Taking into account the current situation, the monitoring committee could approve proposed amendments by written procedure, which is normally a possibility provided for in the rules of procedure of the monitoring committee.

In addition, MS should as well introduce any necessary adjustments to the national rules, e.g. on eligibility.

The Commission is committed to work together with all the affected Member States and regions to amend, where necessary, the existing programmes in a swift manner. As an example, the Commission is able to process faster amendment requests that were pre-discussed and pre-agreed with the MS informally, before the submission of the request via SFC. Therefore, a constructive dialogue and cooperation between the Commission services and the MS before the submission of a request for a programme amendment is of utmost importance.

Also, the Commission organised itself internally in order to shorten as much as possible the time for adoption of its decisions.

3) Once the relevant programme amendments are in force (either following approval by the Commission in category (a), or by the monitoring committee in category (b) and (c)), the certifying authority may then include the relevant expenditure in interim payment application and submit it to the Commission for reimbursement.

[1] COM(2020)113.

[2] Regulation (EU) 2020/460

[3] Investment priority under Article 5(1)(a) of Regulation (EU) No 1301/2013.

[4] It is recalled that for the ESF the codes for the intervention field dimension (Nos 102 to 120) correspond to the investment priorities (see Table 1 of Annex I of Commission Implementing Regulation (EU) No 215/2014) and any change to the investment priorities requires approval by Commission decision.

<b>BG</b>	When we allocate funds from one investment priority (IP) and priority axis (PA) to another is it necessary to follow all the rules set for this IP/PA incl. target groups/beneficiary/costs?
<b>PL</b>	In case MS would like to transfer money between Funds, go beyond the financial limits set out in the CPR modification (more than 8% of the priority axis or more than 4% of the OP allocation) or OP text misses some important elements necessary for the implementation of the health measures (such as type of beneficiary or mode of implementation, would COM decision be needed and if so, is there any fast track procedure foreseen in such cases? Would the start date of eligibility in such cases be date of submission in SFC or 1 February 2020?
<b>DE</b>	Does this provision [Art. 30(5)] require in any case a programme amendment to address the new possibilities of the CRII? Is it also an option to continue the existing programmes as planned if these measures can also be linked to the reaction on the COVID-10 outbreak in a broader sense? A flexible approach that respects the regional needs is crucial for a successful implementation of the CRII.

<b>DE</b>	Is it possible to start with the new funding opportunities before COM has approved an amendment to the programme?
<b>NL</b>	Can the CRII resources also be added to national Covid support measures, without having to programme them under the ESI funds and ESI funds rules (CPR)? e.g. STW arrangements which do not fall under the ESI-programming.
<b>NL</b>	What are the consequences of programming CRII resources under the existing ESI-programmes and spending the money (from Feb 2020), without having legal certainty of the programme amendment being adopted by the COM?
<b>FR</b>	Sur la rétroactivité : s'il est possible de mettre en route les actions avant même l'approbation des modifications, il conviendrait cependant que ladite approbation intervienne rapidement afin de sécuriser les décisions des autorités de gestion. Aussi, la Commission pourrait-elle indiquer sous quel délai elle sera en mesure d'approuver les modifications de programmes opérationnels ?
<b>FR</b>	Sur la rétroactivité également : pourriez-vous confirmer que matériel acheté par les hôpitaux depuis le 1 <sup>er</sup> février comme des respirateurs ainsi que les équipements et travaux réalisés en vue de lutter contre le COVID sont bien éligibles à la CRII?
<b>IT</b>	In order to accommodate health expenditure within TO1 and benefit of the retroactivity of expenditures since 1.2.2020, it is important that expenditures (part already occurred) can be declared without a prior OP modification. Furthermore, hospitals and other related public healthcare centres must be able to become beneficiaries (currently under TO3 enterprises are beneficiaries). The Italians ask for a wide interpretation of the OP provisions in this respect.
<b>SE</b>	Will there be more flexibility when it comes to programme changes due to new focus areas/investment priorities that are chosen to respond to the consequences of the Corona crisis?
<b>UK</b>	Is there anything more you can tell us about how you anticipate this working? We could identify funding to be diverted to fighting the impacts of Corona virus quite quickly, but we will need to know urgently what approvals we will need from you, how to get them, how long it will take and what you will accept as reductions to the current agreed programme outputs and expenditure as a result.
<b>EE</b>	Is it possible to implement measures related to the corona virus outbreak without a Commission decision amending the operational programme in substance?
<b>PL</b>	How the process of amending programmes, will be organized, have

	any fast paths been planned?
<b>SI</b>	What is the relation towards OP modification – we understand that we as managing authority could approve COVID-19 operation on the basis of your letter and incorporate the content in a subsequent OP modification (approved only by monitoring committee)?
<b>BG</b>	How the force majeure conditions could be used in order to speed up the whole process of structuring a measure supporting the corona crisis overcoming?
<b>CZ</b>	How will the simplified transfer procedure look like? Can we expect that not only the financial transfers under the CRII per se would be greenlighted, but also other changes related to this revision (e.g. related change of indicators) will be considered as approved?
<b>DE</b>	The existing programmes are encouraged by COM to commit funding in next weeks and deal with paperwork later. Is there a need for new indicators or indicator changes in order to finance new actions responding to the crisis? Or can indicator changes be rather dealt with later on? Is additional reporting necessary? Do the existing mechanisms and procedures for the financial and administrative implementation of the programs remain unchanged?
<b>DE</b>	Please confirm, that the proposed amendment in Art. 30 (5) new includes the possibility to adapt targets and indicators of the measures concerned, proportionally to amount transferred (e.g.: Reducing by 5% the volume of a specific measure, this may lead to a 5% reduced target for 2023, while the targets respectively have to be more ambitious for the measure which receives an additional budget).
<b>FI</b>	Are there some proposed modifications concerning the administrative process [or programme amendments] e.g approval by MC?
<b>FI</b>	The necessity of changing the intervention fields?
<b>FI</b>	What about the timeline?
<b>SK</b>	Is it sufficient if changes to the OP are approved by the Monitoring Committee using the per rollam procedure (in order to accelerate the process)?
<b>IT</b>	Is it possible to confirm that, being expenditure related to the public health emergency eligible from 1st February 2020, the amendment to the Partnership Agreement (and relevant programmes), if needed, can take place at a later stage?
<b>IT</b>	More generally, the inclusion of investment priorities or specific objectives related to expenditure for the COVID-19 outbreak in the

	Regional Operational Programmes (e.g. in TO1 but also in TO3, TO8, TO9) could be considered as non-substantial changes and, therefore, not require a decision by the Commission approving the Programme amendment, in accordance with the simplified procedure set out in the proposal for a regulation on the Coronavirus Response Investment Initiative (art. 2)?
<b>EE</b>	Is it possible to start the implementation of actions linked to the outbreak of the corona virus immediately, but to modify the operational programme (even at the Monitoring Committee level) towards the end of 2020? Namely we need to be prepared for changes in the economic and labour market circumstances as well as possible changes in the demand for support in different measures. Given that 100% of EU funding has been planned, and much of it in economic and labour market measures, it is at the moment difficult to determine which could be the "donor" priorities and to which extent. This should be clearer in some months. Nevertheless crisis intervention might be needed sooner.

Specific OP amendment for CRII measures

The MS can choose if it wants to submit a separate request for programme amendments for CRII measures only. A joint programme amendment is also possible covering both CRII measures and previously planned changes. In both cases, in accordance with Article 110(2)(e) CPR the monitoring committee has to approve the proposal for any amendment to the operational programme. (For amendments of rural development programmes, the monitoring committees shall be consulted in accordance with Article 49(3) CPR.) As regards the EMFF, Article 49 CPR and Article 113 of R. 508/2014 apply.

Whilst in accordance with Article 65(10) CPR expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020, please note that the eligibility of expenditure not stemming from operations for fostering crisis response capacities in the context of the COVID-19 outbreak is subject to Article 65 (9) CPR (i.e. expenditure that becomes eligible as a result of the programme amendment is eligible from the date of submission of the OP amendment request to the Commission). In addition, if separate amendment requests are submitted, they should not overlap in SFC, i.e. the second one should be introduced in SFC only after the first one is approved (or withdrawn).

<b>DE</b>	Should there be an OP amendment process for CRII measures specifically? How should this been distinguished with already planned OP amendment processes to shift budget between priorities before end 2020?
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Is it necessary to update the ITI strategy?

In order to reply to this question, it is necessary to examine the link between the planned new types of projects and the underlying ITI strategy as well as the current content of the relevant programme.

As regards the link between new projects and the ITI strategy, it should be noted that in accordance with Article 36 CPR, an ITI is based on an urban development strategy or other territorial strategy, or a territorial pact referred to in Article 12(1) ESF Regulation. Therefore,

the new types of projects have to fall within the scope of that strategy. If this is not the case, the strategy would have to be revised accordingly.

As regards the link between the programme content and the planned new types of projects, please see the replies dedicated specifically to the topic of programme amendment.

<b>BE</b>	If the new measures are included in the same priority axis (SMEs), fit into the original scope and ITI strategy, and would only mean a different focus of the call for projects, could you please confirm that an amendment of the OP is not needed? What would be then the procedure for the MA to have this change registered/approved?
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Is it necessary to amend the Partnership Agreement as well?

In its proposal for the Coronavirus Response Investment Initiative Plus (COM(2020)138), presented on 2 April 2020, the Commission proposed that the Partnership Agreement would not be amended as of the date of entry into force of this proposal until the end of the 2014-2020 programming period (new Article 25a(6) CPR).

As regards the amendment of programmes, please see the replies dedicated specifically to this topic.

<b>IT</b>	Is it possible to confirm that, being expenditure related to the public health emergency eligible from 1st February 2020, the amendment to the Partnership Agreement (and relevant programmes), if needed, can take place at a later stage?
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<b>FI</b>	What about the Partnership Agreement?
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When a programme already covers TO1(b), is a programme amendment necessary?

The investment priority TO1(b) of the ERDF, as extended by the Regulation (EU) 2020/460, can cover all investments targeting crisis response capacity of health systems as long as they fall within the ERDF scope of support, as defined in Article 3 ERDF Regulation.

Please consult the replies under the ERDF tab of the CRII Q&A website for further details and examples of the projects that may receive support.

As regards the need for programme amendment, this should be assessed on a case-by-case basis, taking into account the operations to be supported and the current content of the programme, e.g. specific objectives, types and examples of actions to be supported, the main target groups, specific territories targeted, or the types of beneficiaries included in the text of operational programme. Given the fact that "investment necessary for strengthening the crisis response capacities in health services" is broadening the existing scope of investment priority TO1(b), it is unlikely that the programme covered such projects before [the Regulation \(EU\) 2020/460](#) entered into force, thus a programme amendment will be necessary in order to cover them. Please note that in accordance with Article 25a(7) CPR introduced by the Regulation (EU) 2020/558 under the Coronavirus Response Investment Initiative Plus, such operations that are outside of the current programme may be selected for support by the ERDF or the ESF prior to the approval of the amended programme and that eligibility of such projects' expenditure starts from 1 February 2020 and not from the date of the submission of the request for programme amendment to the Commission.

For more detailed advice on programme amendments, please consult the replies under the Structural Funds tab of the CRII Q&A website, under the "Programme amendments"



category. In particular, the reply “COVID-19 related programme amendments” may be helpful.

<b>FR</b>	<p>Si la stratégie du programme mobilise déjà la priorité d'investissement 1b), est-ce suffisant pour financer des projets visant les capacités des systèmes de santé ?</p> <p>If the programme strategy already mobilises investment priority 1b), is it sufficient to finance projects targeting the capacity of health systems?</p>
<b>FR</b>	<p>Ou bien, une modification du programme opérationnel est-elle nécessaire pour financer des projets en lien avec les systèmes de santé au titre de la priorité d'investissement 1b) élargie ? Dans ce cas, en quoi consisterait cette modification du PO ?</p> <p>Or is an amendment to the operational programme necessary to finance projects related to health systems under the extended investment priority 1b)? In this case, what would this change to the OP consist of?</p>

## **Decommitment**

Notification to the European Commission

The exception to the decommitment to be invoked in this case if need be, will follow the standard procedure of Article 88 CPR. There is no need to submit any information at this stage: the relating information invoking the force majeure exception should be submitted to the Commission by 31 January of the year following the one for which there would be a de-commitment, in accordance with Art. 87 (2) CPR. as is always the case.

<b>RO-HU ETC</b>	<p>In the context of the current crisis, we already started to receive feedback from various projects about their intention to suspend their operations. Therefore, we would have a question in relation to the application of the art 87 of the Regulation 1303, respectively if the MS should notify COM of the force majeure:</p> <ul style="list-style-type: none"> <li>-from the very beginning (when the crisis starts), or</li> <li>-the notification should be submitted at the end of the year, when clear data/figures will be available.</li> </ul>
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Application of Article 87 CPR

Article 87 (1) (b) CPR provides for the exception to decommitment: it is a derogation to the general rule of decommitment expressed in Art. 86 (1) CPR. In this respect it should not be considered as a flexibility provision but should be interpreted strictly. In line with this Article, if the Member State has not been able to make a payment application due to force majeure which seriously affected the implementation of the programmes, such amount will be deducted from the amount concerned by decommitment. Direct impact of force majeure on programme implementation has to be established.

In Union law, the notion of ‘force majeure’ [1] generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming ‘force majeure’, and c) could not have been avoided despite the exercise of all due care. For a case of ‘force majeure’, all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated. Force majeure is a term of rather restricted scope.

Article 87 (1)(b) is a regulatory provision which applies to all amounts equivalent to the part of budget commitments for which it has not been possible to make a payment application and does not only concern specific amounts relating to investments targeting COVID outbreak.

Regarding 2020 commitments, in line with Article 136(2) CPR, the part of commitments still open on 31 December 2023 will be decommitted if any of the closure documents referred to in Article 141(1) CPR has not been submitted to the Commission by the regulatory deadline.

Article 87 (1) CPR does not allow for an extension of the end date for eligibility period stated in Article 65 (2) CPR: this means that expenditure may not be incurred by beneficiaries beyond 2023 and until submission of closure documents based on Article 87(1) CPR. Only a reduction of amounts from decommitment for which no payment application was made due to circumstances of force majeure may be applied in the specific conditions stated in Art. 87 (1) CPR.

Please see also the general reply on force majeure.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case 145/85 *Denkavit België* [1987] ECR 565 , paragraph 11; Case C-377/03 *Commission v Belgium* [2006] ECR I-9733 , paragraph 95; and Case C-218/09 *SGS Belgium and Others* [2010] ECR I-2373 , paragraph 44

<b>NL</b>	Article 87 of CPR allows for flexibility on force majeure. Does this only apply to the CRII resources or to the ESI-programming as a whole?
<b>LV</b>	Regarding force majeure decommitment exception it is not clear with legal certainty whether the ESIF project expenditure shall be eligible for a contribution from the ESI Funds if it has been incurred by a beneficiary and paid by 31 December 2023 or beyond at least until the submission of closure documents to the Commission in case of covid-19 as force majeure.
<b>LV</b>	Clarity is needed on the possibility under force majeure to declare as eligible ESIF projects completion expenses incurred beyond the end of 2023, particularly for projects where implementation is spanning over several years. We urge the Commission to ensure such exemptions.

#### Application of Article 87 CPR at the end of programming period

Article 87 (1) (b) CPR provides for the exception to decommitment: in line with this Article, if the Member State has not been able to make a payment application due to force majeure which seriously affected the implementation of the programmes, such amount will be reduced from the amount concerned by decommitment. Direct impact of force majeure to programme implementation must be established.

In Union law, the notion of 'force majeure' [1] generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. For a case of 'force majeure', all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated. Force majeure is a term of rather restricted scope.

At the end of a year N+3 (and outside the decommitment at closure), a reduction of amounts concerned by decommitment for which no payment application was made could

be applied provided that the conditions of Art. 87 (1)(b) CPR are fulfilled. The fact that no payment application could be made due to the specific corona virus outbreak could be regarded as circumstances of force majeure. As this depends on the specifics of the cases at stake it would require an analysis on a case by case basis. The procedure is the one provided in Article 88 CPR.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case 145/85 *Denkavit België* [1987] ECR 565 , paragraph 11; Case C-377/03 *Commission v Belgium* [2006] ECR I-9733 , paragraph 95; and Case C-218/09 *SGS Belgium and Others* [2010] ECR I-2373 , paragraph 44

<b>MS</b>	Has consideration been given to how 'force majeure' will be taken into consideration a) at the end of the year for N+3 and b) at the end of the programme for the performance framework?
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## **Public procurement**

Is it possible to use a direct award procedure targeting a specific sector of the economy?

The Public Procurement directives provide for a full set of different possibilities to tackle efficiently the different urgency situations. In case of extreme urgency, the negotiated procedure without publication could be used if all conditions are fulfilled. However, if this derogation allows contracting authorities to directly negotiate with economic operators, a direct award to a precise economic operator can only take place in situations in which such economic operator is the only able to deliver within the technical and time constraints imposed by extreme urgency.

<b>BG</b>	Is it possible to use direct award procedure targeting a specific sector of the economy, for example hospitals or companies producing pharmaceuticals/protective clothing?
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Directive 2014/24/EU exemptions

Directive 2014/24/EU already allows for a significant level of flexibility to address situations of extreme urgency such as this one including reduced deadlines and the use of the negotiated procedure without publication, and a number of exemptions. The selection of financial intermediaries is meant to provide a framework for the disbursement of financial instruments over a longer period and should not be subject to further exemptions.

<b>BG</b>	Directive 24/2014 and, respectively the local Public Procurement Law to allow an exception for selection of financial intermediaries without PPA procedure.
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Impact of force majeure on public procurement procedures or contract execution (comprising a number of replies originally uploaded as separate)

***The reply to a number of questions listed separately earlier have been merged in this entry for consistency and to avoid repetitions. The questions to which separate replies were provided originally – but are equally covered by this reply – are set in bold/underline.***

In line with Art. 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: [...]

*"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."*

Provided that the specific circumstance invoked by Member States qualifies as unforeseeable/unpredictable, they may make use the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts.

Such circumstances depend on the specific cases at stake and require a case by case analysis. For example, the purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as an unpredictable circumstance within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.

In addition, Art 72(1)(e) of Directive 2014/24/EU allows for non-substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms. Article 72(1)(c) of the same Directive also allows for contract modifications without a new procurement procedure in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, which is the case of the Coronavirus crisis, *when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50 % of the value of the original contract or framework agreement; where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive.*<sup>[1]</sup>

For more information, please, consult the "Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis" adopted by the Commission on 31 March (2020/C 108 I/01).<sup>[2]</sup>

Beyond this, the Commission's services are ready to provide help and assistance to the Member States' authorities.

<sup>[1]</sup> The part in italics (as set out under Art. 72(1)(c) of the public procurement Directive) is added as clarification to the original reply to BG question *"Is it possible to delay the execution of contracts under public procurement procedures and extend the deadlines for implementation? Will be there some recommendations?"*

<sup>[2]</sup> The replies to BG question *"Is it possible to apply public procurement rules more flexibly?"*, LT question *"We would like to COM explanation in written for as regards force majeure regime and it implications on management of funds, audits, state aid, public procurement etc."* and SI question *"Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?"* originally referred to the Communication (COM(2015) 454 final) which in the current context is replaced by the communication indicated in the text.

<b>BG</b>	Does standard public procurement apply or does the EC believe exceptions can be made in this case in order to deliver measures faster?
<b>BG</b>	<b><u>Is it possible to delay the execution of contracts under public procurement</u></b>

	<b><u>procedures and extend the deadlines for implementation? Will be there some recommendations?</u></b>
<b>BG</b>	<b><u>Is it possible to apply public procurement rules more flexibly?</u></b>
<b>LT</b>	<b><u>We would like to COM explanation in written for as regards force majeure regime and its implications on management of funds, audits, state aid, public procurement etc.</u></b>
<b>SI</b>	<b><u>Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?</u></b>

Revising terms of agreements (due to lack of working capital in the market, requirements of suppliers to pay for ordered goods/services/works 100% or less in advance and etc.).

As all your questions essentially touch upon modifications of contract clauses on payment, we can answer them all at once.

Provided all conditions are complied with, we are of the opinion that such modifications are perfectly fit to enter the scope of Article 72(1)(c) of Directive 2014/24.

Please note the "unforeseen circumstances" have to have an influence in the execution of the contract. Of course, in the current situation, we can accept a presumption of such an influence in all relevant contracts.

However, we do not see a connection of an emergency situation and Article 72(1)(d).

<b>LT</b>	<p>Could the contracting authority (beneficiary) benefit from Article 72, points (d) and (c) from paragraph 1 of Directive 2014/24/EU to change the following aspects in the agreement:</p> <ol style="list-style-type: none"> <li>1) changing payment terms (paying by installments), for example, dividing total agreement price into several prices: (1) for delivered goods (2) for installation, commissioning, training and set separate payment terms;</li> <li>2) to waive the advance guarantee which is provided for the initial agreement of purchase if it is difficult or impossible for the supplier to obtain such guarantee;</li> <li>3) include, where justified, an advance payment if it was not provided for the initial agreement of purchase.</li> </ol> <p>In these cases, could the contracting authority rely on Article 72, points (c) and (d) from paragraph 1 of Directive 2014/24/EU?</p>
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Modification of ongoing public procurement contracts in the context of the COVID-19 crisis

A number of questions have been raised related to the need to modify current contracts (i.e. contracts already awarded and whose execution is ongoing) due to the present COVID-19 crisis. In fact, the consequences of the crisis on public contracts can be very important: the economic operator holder of the contract may face difficulties to carry out the works as agreed in the contract and provide the services or supplies subject of the contract. In certain cases, the economic operator may be unable to execute the contract (e.g. due to production stop or broken supply-chain or may face liquidity problems because of the lockdown).

This might provoke situations of general contractual defaults with the associated litigation and important economic and social consequences. The risk would concern both economic operators (who may declare bankruptcy) and contracting authorities (who will not receive the works, services and supplies that they need).

In this situation, modifications of the public contracts on the grounds of Article 72(1)c) of Directive 2014/24/EU (and equivalent provisions of the concession contracts and utilities directives) may be justified from the moment that the conditions established by this provision are respected. More precisely:

*a) the need for the modifications result from circumstances which a diligent contracting authority could not foresee:*

in the current circumstances, it is rather clear that the first condition would be met (the COVID-19 crisis being clearly a circumstance that could not be foreseen by contracting authorities);

*b) the modifications do not change the overall nature of the contract:*

it would mean that the modifications would not change substantively the dimension/volume and the nature of the works, services or supplies to be provided, (this should be assessed case-by-case). It is clear that changes relating to the payment conditions, the granting to the economic operators of exemptions from contractual and legal sanctions for defaults in the contracts execution and justified extensions of the contractual execution delays are likely to be considered as justified modifications on the grounds of Article 72(1)c);

*c) any increase in price is not higher than 50% of the value of the original contract; where several successive modifications are made, that limitation applies to the value of each modification; such consecutive modifications shall not be aimed at circumventing the Directive;*

it is worth clarifying that the absence of increase in price does not preclude the application of Article 72(1)c).

In the current circumstances, it should be presumed that modifications of public contracts on the grounds of Article 72(1) c) may be acceptable, however with the following limit: the modifications must be **justified to the extent that they are needed to mitigate** the consequences of the crisis in the execution of public contracts and only to that extent.

Guidance on how to use all flexibilities offered by the EU public procurement framework Please consult this guidance document: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG>

## **Audit**

COVID-19 and management verifications; implication of force majeure on audits

***The reply to a number of questions listed separately earlier have been merged in this entry for consistency and to avoid repetitions. The questions to which separate replies were provided originally – but are equally covered by this reply – are set in bold.***

Article 125(5)(a) CPR provides for administrative verifications in respect of each application for reimbursement by beneficiaries (desk-based verifications). Member States are encouraged to perform desk-based verifications where possible until such time as it is safe for staff to perform on-the-spot visits again since in the current emergency situation, the Commission understands that on-the-spot verifications are not possible.

Article 125(5)(b) CPR provides for the managing authority to carry out on-the-spot verifications of operations. As far as management verifications are concerned, certifying authorities can already now declare in interim payment applications expenditure which has undergone only administrative verifications (desk checks). On-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)(b) CPR are done only for a risk-basis sample (the same line applies to verifications under Article 23 of the ETC regulation). Their extent and timing depends on the characteristics of the operation. The Guidance note on management verifications recommends that they should be completed before certification in the accounts (i.e. 15 February 2021). Therefore managing authorities have flexibility also under the current rules to carry out the on-the-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020. In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of E-cohesion: through review of documents available in programmes' information systems or submitted electronically by auditees.

Compliance with legal applicable rules is still a requirement. Therefore management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules. The Audit Authorities will need to take into account the amended CPR legal provisions including amended State aid rules during their audit work for the process of providing assurance on the legality and regularity of expenditure.

Audits by the audit authorities under Article 127(1) CPR are done on a statistical sample of operations drawn from the expenditure of the accounting year (i.e. up to 30 June 2020) after this expenditure has been declared to the Commission, or based on professional judgement on a non statistical sample under duly justified cases, while respecting a minimum coverage of operations and expenditure. The Commission has recently introduced a CPR modification that clarifies, between others, and subject to adoption by the co-legislator, that the current Covid19 crisis may be considered as a duly justified case to apply non statistical sampling for the 2019-2020 accounting year.

As regards current audit work, the Italian audit authorities have received a letter through SFC2014 (reference Ares(2020)1641010 of 18/3/2020) from the audit directors of EMPL and REGIO, prior to this new Commission initiative. In this letter, it is recommended that those audit authorities that have adopted remote working arrangements carry out the audit activities as far as possible through review of documents, including those available via information systems and those that can be submitted electronically by the auditees. Once the emergency is over, the audit authority will be able to assess whether it is necessary to complete the work by visiting the operation on the spot to verify the physical implementation of the project or obtain further clarifications. At that moment, audit authorities should also assess the scope of the activities to be carried out, so that the priorities can be reviewed, in line with the resources and time available, to ensure submission of the annual control report by 15 February 2021.

A further strongly recommended manner to significantly reduce the proportion of audits of operations per operational programme whilst keeping the assurance level high is to group operational programmes into one sample, hence reducing significantly the audit work since the sample of operations to audit would cover an enlarged population.

Considering the current practice in Romania (procedures of the managing authority), on-the-spot checks are mandatory when at least 40% of the investment is completed and when approving the final payment claim for the project. However, the Commission services are fully aware that, under the current circumstances of the pandemic, on-the-spot verifications may be impacted by the rules set up by the national authorities for protecting public health. Therefore, it is the responsibility of the managing authority to decide on the opportunity for having procedures with a temporary character, adapted to the existing crisis, considering all elements above, the potential impact on beneficiaries and the risk involved by each project.

It should be noted that for the EAFRD different rules apply as laid down in Regulation 1306/2013.

IT	<p><b>The Italian authorities envisage certifying expenditures related to the COVID19 emergency in the coming weeks. On the spot audit checks will be impossible to implement in the present circumstances (curfew, health risks). The proposal is then to allow certifying authorities to declare expenditures without on-the-spot checks. Moreover, the Italians welcome any other simplification on the audit side.</b></p>
UK	<p><b>Will the Commission consider greater flexibility in terms of management and control systems? (practical implications i.e. travel restrictions)?</b></p>
LT	<p><b>Force majeure regime and its implications on audits</b></p>
RO	<p>I would appreciate if I could consult you in the following aspects: In view of the COVID-19 pandemic, at the managing authority level, on-the-spot verifications were suspended, and, of course, these will be completed after overcoming the difficult situation that everyone is going through.</p> <p>However, on-the-spot verifications for the final reimbursement claims remained in question.</p> <p>Given the extremely low error rate per program, as well as the need to support the economy, we would like to kindly ask you if you could please let us know your opinion concerning the authorization of the final reimbursement claims with the possibility to complete on-the-spot verifications after this difficult situation, following any irregularity and financially impact finding to be recovered from the beneficiary.</p> <p>For us to order all the necessary internal measures that are required in relation to this topic, we are looking forward to your reply.</p>
BE	<p>If new operations need to be decided, (launch of open calls for projects with wide dissemination, compliance with non-discriminatory and transparent selection criteria,</p>



	establishment of an expert committee, etc.) how do the Audit Authority and all audit levels check these points?
DE	<p>Are provisions of Article 125(5) CPR applicable for the management verifications under Article 23 of the ETC regulation (MA of the Interreg BB(DE)?</p> <p>What about the possibility to modify (simplify) control modalities in order to finalise the audits on time?</p>

Absence of on the spot audits and force majeure

The legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. This concerns in particular rules on the management and control system (including e.g. the requirement to set up procedures to ensure an adequate audit trail). These rules remain an important safeguard for the regularity of operations. For the EAFRD, the rules for the CAP laid down in Regulation 1306/2013 equally apply. Therefore, management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules.

Article 125(5)(b) of the CPR provides for the managing authority to carry out on the spot verifications of operations. As far as management verifications are concerned, certifying authorities can already now declare in interim payment applications expenditure, which has undergone only administrative verifications (desk checks). On-spot checks by the managing authorities or intermediate bodies under article 125(5)(b) of the CPR are done only for a risk-basis sample (the same line applies to verifications under Article 23 of the ETC regulation). Their extent and timing depends on the characteristics of the operation. The Guidance note on management verifications recommends that they should be completed before certification in the accounts (i.e. 15 February 2021). Therefore managing authorities have flexibility also under the current rules to carry out the on-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020. In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of E-cohesion: through review of documents available in programmes' information systems or submitted electronically by auditees.

On the basis of the above managing authorities have sufficient flexibility, as they can proceed in the conditions stated above with declaration of expenditure and payments to beneficiaries, thus complying with their legal obligations under the CPR. Acting in the way proposed by the national authorities is neither necessary nor recommended. With regard to whether or not the cost of the guarantee can be considered as eligible expenditure, this aspect needs to be verified by the national authorities under the relevant national eligibility rules.

<b>IT</b>	<p>Following the Covid-19, several beneficiaries (SMEs) stopped their productive activities and consequently expenditure incurred on the ground already declared by the beneficiaries to Managing authorities cannot be audited (first level Control on-the-spot checks). In order to restore liquidity and to avoid additional negative financial consequences from the crisis, it would be very useful to reimburse the expenditure already incurred on the ground and declared by the beneficiaries to Managing Authority. Once the Managing Authority has carried out the checks, recovery order could be issued, in case of amount unduly paid.</p>
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In the absence of first level controls (on the spot), is it possible for Managing authorities to get a guarantee from the beneficiaries in order guarantee payments made from possible irregular amounts? If yes, can the cost of these guarantee be considered as eligible expenditure and included in the payment claim to the Commission?

On the spot verifications, audit sample, error rate

It should be underlined that the legislative framework for the implementation of the ESI Funds programmes remains fully applicable even under the current exceptional circumstances. This concerns in particular rules on the management and control system (including e.g. the requirement to set up procedures to ensure an adequate audit trail). These rules remain an important safeguard for the regularity of operations. For the EAFRD, the rules for the CAP laid down in Regulation 1306/2013 equally apply. Therefore management verifications by managing authorities and their intermediate bodies and audits performed by the audit authorities should continue to verify compliance with applicable rules.

Furthermore, the outbreak is not necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful case-by-case assessment in the light of relevant circumstances and in line with the applicable legal framework is always required (please see also the reply on force majeure).

Under article 125(5)b) of the CPR, on-the-spot checks by the managing authorities or intermediate bodies can already be done for a risk-basis sample since the beginning of the programming period. In this context we refer to chapter 1.7 of the Commission guidance on management verifications, section "on-the-spot verifications".

Their extent and timing depends on the characteristics of the operation. There is therefore no date "until which facilitation to use only risk-based approach for on-the-spot checks can be applied", as referred to in the question. The possibility for on the spot verifications on a risk based sample pre existed the Covid 19 crisis and will continue to apply after it. It may have an effect on the normal Management and Control Procedures that have been set up at national level and, of course, there may be a discrepancy there e.g. in case all projects are visited on-spot. If the latter should be the case, it is recommended to add an addendum specifying the exceptional circumstances and their impact on the verifications.

The crisis does not alter the requirement for compliance with applicable rules and the management verifications and audits should continue to verify compliance with applicable rules. As per normal and usual rules, desk management verifications should be carried out before submitting payments and the on the spot verifications should be completed by submission of the accounts in February 2021. It is acknowledged that the on the spot verifications by the managing authority may have to be reduced and/or concentrated into a shorter period. The managing authority should therefore direct its available resources to the riskiest operations when planning its on the spot verifications and try to maximise the use of e-Cohesion for its desk based verifications. Any irregularities identified during these verifications, and corrective action taken before the audit authority had drawn its sample, would be taken into account in the normal way for the treatment of errors by the audit authority. However, if, due to the Covid crisis, the on the spot verifications are delayed until after the audit authority's sample has been drawn and these verifications identify an irregularity in an operation in the audit authority's sample, the Commission would not

consider the circumstances as a valid reason for the absence of quantification of such an irregularity by the audit authority, in line with applicable rules and guidance.

It is therefore advisable for the programme authorities MA and AA to carefully coordinate and ensure that the MA verification plan can be shared with the AA before they draw their sample, and verifications carried out before the AA audits.

<b>PL</b>	How Force majeure can be indicated in the management and control system? In our opinion COVID has affected most of all: 1) Selection of operations 2) Management verifications 3) Procedures for drawing up and submitting payment applications 4) Audits performance. Can EC agree that negative Category in audit assessment cannot be granted in these categories (3 or 4) unless AA and EC has the evidence that the rules were intentionally abused?
<b>PL</b>	What is the exact date until which facilitation to use only risk-based approach for on-the-spot checks can be applied? In our opinion it should be defined on the level of MS, depending on official MS regulations/acts etc.
<b>PL</b>	When on-the-spot checks will be running again, MAs will have quite huge burden of work to be done. Not all projects will be controlled at once. If Audit Authority starts on-spot checks of projects that were planned for on-spot checks of MA/IB and it has been just the matter of time - any irregularities found in such projects by AA should not be counted to ERROR RATE. Irregularities in such cases were not corrected because of force majeure, not because of weakness of the control system.

#### Impact of the COVID-19 crisis on payments to the beneficiaries (Article 132 (1) CPR)

We note the difficulties being encountered by the MA to pay beneficiaries within the 90 day deadline in accordance with Article 132(1) CPR under the current circumstances. However, payments to beneficiaries should not be delayed to ensure these liquidities, in particular for outputs that have been delivered. We also take note that the MA is in contact with beneficiaries for ad hoc measures in case of liquidity problems of the beneficiaries. However when it comes to submitting interim payment applications to the EC, the desk management verifications should have been carried out. Compliance with legal applicable rules is still a requirement. Therefore management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules.

Article 125(5)(b) CPR provides for the managing authority to carry out on-the-spot verifications of operations. As far as management verifications are concerned, certifying authorities can already now declare in interim payment applications expenditure which has undergone only administrative verifications (desk checks). On-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)(b) CPR are done only for a risk-basis sample. Their extent and timing depends on the characteristics of the operation. The Guidance note on management verifications recommends that they should be completed before certification in the accounts (i.e. 15 February 2021). Therefore managing authorities have flexibility also under the current rules to carry out the on-the-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. still in the 2nd half of 2020.

<b>DE-CZ</b>	In Bavaria, the colleagues responsible for the management verifications are currently almost entirely withdrawn from the processing of payment claims of
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	<p>beneficiaries in favour of the processing of “Emergency Assistance Corona” for the Bavarian economy.</p> <p>For the time being, it is therefore not possible to guarantee the 90-day period for payment in accordance with Article 132(1) of Regulation (EU) No 1303/2013. However, we are in contact with our beneficiaries and will, on the part of the managing authority, react with ad hoc measures in case of liquidity problems of the beneficiaries.</p>
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COVID-19 and audit compliance

The crisis does not alter the compliance with applicable rules. Therefore management verifications and audits should continue to verify compliance with applicable rules.

An issue which occurs is the impossibility of doing more than desk verifications and audits at this point in time, and possibly for some time after the crisis until authorities have given the green light for social contacts. See also IT question.

This is not a problem: the regulation sets out that certifying authorities can already now declare in interim payment applications expenditure which has undergone only administrative management verifications (desk checks) and the guidance on management verifications confirms that on-spot checks can be done after the declaration of expenditure and up to the submission of the accounts. Therefore managing authorities have flexibility also under the current rules to carry out the on-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020. In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of E-cohesion: through review of documents available in programmes’ information systems or submitted electronically by auditees.

As regards audits by the audit authorities, the CRII measures fall under normal audit work, carried out after this expenditure has been declared to the Commission. Audit authorities will draw some of these operations as part of their normal random sampling exercise (which most probably could fall in the 2nd or 3rd sampling period). Similar to management verifications, audits can be done desk-based and using electronically available documents as much as possible. The regulation provides that audits can be desk based and need to include on-the-spot verification of the physical implementation only where necessary (article 27(3) of Commission Delegated Regulation 480/2014). Whenever on-the-spot visits are required, these can be postponed. Once the emergency is over, the audit authority will be able to assess the scope of the activities to be carried out and review the priorities, in line with the resources and time available, to ensure submission of the annual control report by 15 February 2021.

<b>UK</b>	How will all these measures be reconciled with audit compliance?
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COVID-19 and assurance package submission

For the time being we consider it is too early to assess the impact of the crisis on our respective longer-term obligations (e.g. assurance packages of next year), and we intend to assess the situation by May.

It should be noted that the EAFRD is not concerned by all the above as fund-specific rules apply.

<b>EL</b>	However, having in mind that the time of “return to normality” is not foreseeable yet,
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I would like to encourage you to consider, even if it might be too soon for that, the scenario of taking into consideration an extended period of 2 years (1/7/2019-30/6/2021) based on which a common assurance package would be submitted, for 2 accounting years, on 15/2/2022. In this direction, the Audit Authorities could apply one multi-period sampling in order to examine the expenditure submitted. This seems to be even more proper since it seems that there will be changes in partnerships agreements in order to provide financial assistance for measures and actions that will help the European population face the situation.

#### Creation of a specific COVID-19 axis and audit requirements

Compliance with applicable law and the assurance process for ESIF expenditure remains fundamental. Therefore, expenditure declared to the Commission for COVID related measures should not be excluded from the population from which the audit authorities draw their random statistical sample.

Management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules. Where the applicable rules are altered in the framework of the CRII measures, both Managing and Audit Authorities will need to take into account the amended legal provisions. This includes the amended CPR as well as the temporary State aid framework with their broadened scope and funding possibilities. Furthermore, the EU procurement directives already envisage specific rules for urgent and unforeseen circumstances. These are available for health supplies and services, as for any other sectors.

To limit administrative complexities in the implementation of the COVID measures and later on audit issues, managing authorities can also make use of simplified cost options, for example standard scales of unit costs, lump sums or flat-rate financing established through a draft budget agreed by the managing authority on a case-by-case basis for operations where the public support does not exceed EUR 100 000 (Article 67 (5) aa CPR).

**FR** Pouvez-vous nous indiquer votre préférence entre la modification des axes existants et la création d'un axe COVID spécifique ? Je me dis que cette dernière solution est la plus lisible pour tout le monde.

PROPOSITION de l'Autorité de gestion : Je trouverai opérationnel d'avoir un axe COVID spécifique alimenté par des transferts de fonds. En Nouvelle-Aquitaine, cela pourrait couvrir les dépenses suivantes :

- Fourniture de matériel médical et de protection aux hôpitaux : masques, vêtements, respirateurs, etc,
- Aides aux entreprises : aide forfaitaire pour soutenir les PME et maintenir les emplois
- Travaux dans les hôpitaux pour répondre au COVID
- Accompagnement des entreprises qui réorientent leur production vers des biens essentiels pour lutter contre le COVID
- Prise en charge des frais de personnel supplémentaires (personnel soignant ou autres) des établissements de santé
- Mise en place d'outils numériques

Avec un axe, on pourrait isoler les opérations COVID, en leur appliquant des règles plus légères en matière de formalisme administratif et de contrôle. Je propose par exemple qu'on sorte ces opérations des plans de contrôle. Je pense que cela est possible car les montants vont être limités compte tenu de l'avancement de nos programmes.

#### Application of the regulatory framework and COVID-19 outbreak

The COVID-19 outbreak provoked an unprecedented crisis and required exceptional measures to be applied. In this respect, the Commission launched a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy to flexibly respond to the rapidly emerging needs in the most exposed sectors, such as healthcare, SMEs and labour markets, and help the most affected territories in Member States and their citizens. The first package of measures proposed by the Commission and adopted on 30 March 2020 introduced a number of important changes that allow for a more effective response in the current situation. In the meantime, the effects on economies and societies became ever more serious. It proved therefore necessary – as part of a second set of measures presented on 2 April 2020 – to go beyond what is already possible and provide exceptional additional flexibility to respond to the current unprecedented situation.

- In addition, the Commission has made available guidance (available under the link below) on how to use all the flexibilities offered by the EU public procurement framework in the emergency situation caused by the coronavirus outbreak. It provides an overview of the choice of tendering procedures available to contracting authorities and applicable deadlines. The guidance points out possibilities, which range from considerable shortening of the generally applicable deadlines to procuring without prior publication of tender notices in exceptional circumstances, such as the extreme urgency linked to the fight against coronavirus. It also provides clarification for example on how in this situation of scarcity of key supplies contracting authorities could find alternative solutions and ways of engaging with the market.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG>

After consulting the Member States to activate Article 107(3)(b) TFEU, which provides that “may be considered compatible with the internal market [...] aid intended to remedy a serious disturbance in the economy of a Member State”, the Commission has also adopted a temporary framework for State aid intended to support the economy in the current COVID-19 outbreak. As a first step, it is planned to implement this framework until the end of December 2020. The Commission will then assess whether or not it is necessary to extend it. The full text of the Temporary Framework can be found under the following link:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/sa\\_covid19\\_temporary-framework.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf).

An amendment of this Temporary framework adopted on 3 April 2020 provides for greater simplification and flexibility to facilitate public support to tackle the consequences of the COVID-19 outbreak. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_570](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_570) and

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/sa\\_covid19\\_1st\\_amendment\\_temporary\\_framework\\_en.pdf](https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf)

-Furthermore, as part of a second set of measures to respond to the current unprecedented situation, additional flexibility is provided in the amendment proposals included in the CRII

Plus package proposed by the Commission. For example, in order to eliminate administrative burden, unnecessary under the present circumstances, the deadline for the submission of annual implementation report in 2020 is postponed.

- However, the COVID-19 outbreak does not alter the requirement for compliance with applicable rules. The legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. This concerns in particular rules on the management and control system (including e.g. the requirement to set up procedures to ensure an adequate audit trail). These rules remain an important safeguard for the regularity of operations. For the EAFRD, the rules for the CAP laid down in Regulation 1306/2013 equally apply. Therefore management verifications by managing authorities and their intermediate bodies and audits performed by the audit authorities should continue to verify compliance with applicable rules.

- Article 125(5)(b) CPR provides for the managing authority to carry out on the spot verifications of operations, the frequency and coverage of which are to be proportionate to the amount of public support and level of risk identified. As far as management verifications are concerned, certifying authorities can already now declare in interim payment applications expenditure, which has undergone only administrative verifications (desk checks). On-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)(b) CPR are done only for a risk-basis sample (the same line applies to verifications under Article 23 of the ETC regulation). Their extent and timing depends on the characteristics of the operation. The Guidance note on management verifications recommends that they should be completed before certification in the accounts (i.e. 15 February 2021). Therefore managing authorities have flexibility also under the current rules to carry out the on-the-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020. In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of E-cohesion: through review of documents available in programmes' information systems or submitted electronically by auditees.

<b>DE</b>	Do the existing mechanisms and procedures for the financial and administrative implementation of the programmes remain unchanged?
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## 2. European Social Fund

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***The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.***

### **Typology of indicative measures under the ESF and YEI to address the COVID-19 crisis**

[Typology ESF measures to address COVID.pdf](#)

### **Short Time Work Schemes**

#### **FAQ**

[Short Time Work Schemes FAQ.pdf](#)

Eligibility of short time work schemes

Short-time work schemes (STW) are public programmes that allow firms experiencing economic difficulties to temporarily reduce the working hours of their employees, who in turn receive income support from the State for the hours not worked.

The main purpose of these schemes is to avoid dismissals, protecting employees and limiting the consequences of a shock. Also, the use of short-time work allows the burden of the adjustment to be shared more equally across employees, and preserves the human capital of the concerned firms.

A key characteristic is that the employment relationships are maintained during the period of short-time work, even in cases when working hours are reduced to zero (i.e. a full suspension of work).

The ESF can play an important role, in particular in Member States with large national allocations, to support the Member States' efforts to delay the spread of the virus, including mitigating measures such as the reduction of hours worked, the organisation of flexible work arrangements such as shifts, etc.

In particular, the ESF can support, short-time work schemes for workers, as follows:

- *Under Thematic Objective 9, investment priority on "access to services":* Priority to workers in **sectors directly affected by the public health ban to congregate** (notably the hospitality sector - bars, restaurants, shops, schools, etc. closed as closure was imposed to



halt the spreading of the Coronavirus, but also for staff in aviation given the numerous restrictions to travel for the same reason). In this case, there is **no need to combine these schemes with active measures** (e.g. training) as these STW measures are driven by the need to ensure access to healthcare services by delaying the spread of the virus.

- *Under Thematic Objective 8, in particular the investment priority on “adaptation of workers and enterprises to change”:* STW measures to maintain employment in **sectors not directly at the forefront of combating the spread of the virus, but undergoing side-effects**: e.g. suffering delays in delivery of supplies or facing a drop in demand, for those sectors and companies; STW arrangements supported by the ESF should be **more consistently accompanied by active measures**: requirements to ensure access to training for staff (which can take place through distance learning or at a later stage), or a commitment of companies to maintain these workers in employment for a certain duration (e.g. at least equal to the duration of the time the worker was benefitting from the STW). This is due to the fact that these STW measures are driven by the aim to maintain employment and therefore require an active component. However, in light of the urgency of the current Coronavirus crisis, this is not a requirement, rather a recommendation in how to design ESF support.

It should be underlined that in case a scheme pursues two objectives (containing the spread of the virus and maintaining employment), Member States have flexibility and they can, if they so wish, also programme these STW schemes under the employment thematic objective (TO 8) in particular the investment priority on “adaptation of workers to change”. This is justified by the fact that these STW measures - whilst driven by the need to ensure access to healthcare services by delaying the spread of the virus – also aim at maintaining employment. As these schemes pursue two objectives, it is up to Member States to decide to programme them either under thematic objective 8 or 9.

The following general conditions apply:

- **the time duration of the exceptional STW arrangements** supported by the ESF should be clearly stipulated in relevant national legislation and ESF eligibility rules.
- Member States should make sure that **national law allows such schemes**.
- The **national eligibility rules** need to comply with the very limited set of eligibility rules at EU level (in the Common Provisions Regulation and the ESF Regulation). The national eligibility rules on the ESF should determine what is eligible. Member States have ample flexibility in defining the eligible costs.
- Member States also have the competence to determine **how they will check whether the eligibility rules are complied with**. It will be useful to also discuss these with the national audit authority as this will determine what will have to be checked at the different levels (by the managing authority, by the national Audit Authority and by the Commission auditors). This also ensures audit certainty with regard to such expenditure under the European Social Fund. It is therefore of utmost importance to keep it simple and avoid gold-plating.

<b>EE</b>	On the present scope of the ESF regulation we would ask confirmation that it is possible to grant:
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· Temporary wage support for people already employed, but at risk of layoffs. Under which investment priorities could this be planned? We request confirmation because some ESF investment priorities refer explicitly to narrower target groups.

#### Data collection

As short time work arrangements (STWA), by definition, do not change the participant's labour market situation, MAs will report common result indicators, by default, with zero. The common output indicators are applicable. The minimum requirement is the recording and reporting of the set of non-sensitive data on labour market status: employment situation (by default: employed), age and educational attainment, broken down by gender.

Specific result indicators, especially if a specific aim is sought (e.g. "workers still in employment 6 months after the support" or "number of workers kept in full-time jobs") may be considered for communication purposes and for the evaluation of the scheme's effectiveness.

In the context of the regulatory changes proposed in the Corona Response Investment Initiative, the Court of Auditors have recalled the necessity to sustain the accountability for spending EU funds<sup>[1]</sup>. The absence of microdata means that no quantitative method can be used for evaluations purposes and thus limits seriously the robustness of evaluations.

In the absence of the complete set of non-sensitive data, participants are reported only to the grand total of participants. For this emergency support, the resulting cumulative increase in the mismatch between the common output indicators and the grand total of participants in the concerned parts of the programme will not be considered as a serious deficiency in the quality and reliability of the monitoring system or of the data on common indicators.

<sup>[1]</sup> Opinion No 3/2020 (pursuant to Articles 287(4) and 322(1)(a), TFEU) on the proposal 2020/0054(COD) for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1303/2013 and Regulation (EU) No 1301/2013 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

**EL** Is there an obligation for STW interventions to collect microdata to measure common indicators for participants when these will be incorporated as separate actions into the respective investment priorities of OPs?

Please verify that we can use programme specific indicators for participants without the obligation to collect microdata and consequently without the obligation to measure and report values for common indicator.

EL

What if a MS cannot collect data on all common indicators for STW schemes?

### Self-employment

Short-time work schemes generally do not apply to the **self-employed** (who can organise their work freely, and assume the business risks associated with their entrepreneurial activity). However, the ESF can also support specific schemes for the self-employed.

As it is the case for STW, depending on the intervention logic, support for self-employed can be programmed under the investment priority on **adaptation of workers and enterprises to change** (Article 3(1)(a)(v) of the ESF Regulation) in case these measures are aimed at ensuring that workers and companies can adapt to the new crisis and maintain their job or business. This support can also be programmed under the investment priority on **“access to services”** (Article 3(1)(b)(iv) ESF Regulation) in case closure of businesses was imposed by the government to contain the spread of the virus.

It should be underlined that in case a scheme supports both objectives (i.e. containing the spread of the virus and maintaining employment), Member States have flexibility and they can, if they so wish, also programme these support schemes under the employment thematic objective (TO 8), in particular the investment priority on “adaptation of workers and enterprises to change”. This is justified by the fact that these measures - whilst driven by the need to ensure access to healthcare services by delaying the spread of the virus – also aim at maintaining employment. As these schemes pursue two objectives, it is up to Member States to decide to programme them either under thematic objective 8 or 9.

<b>IT</b>	Can the ESF provide financial support to self-employed, e.g. electricians or plumbers, who during the lockdown are not working?
<b>PL</b>	Please confirm the possibility of implementing the intervention planned from the ESF: In the details our shielding programme, to be financed by ESF, will cover: - temporary (3/6 months) co-financing of part of the remuneration costs of employees of a given entrepreneur and social security contributions due from them - in the case of entrepreneurs employing employees, - temporary (3/6 months) co-financing of part of the costs of running a business - in the case of an entrepreneur who is a natural person not having employees (self-employed). In financial terms ESF input would come from TO 8 at national and regional levels.

## **Eligibility of expenditure for Coronacrisis response operations supported by the ESF**

Medical and other staff, medicines, medical devices and protective material

**ESF eligibility rules are national** [1]: The national eligibility rules on the ESF should determine what is eligible. Member States have ample flexibility in defining the eligible costs of the actions. These national eligibility rules need to comply with the very limited set of eligibility rules at EU level (in the Common Provisions Regulation and the ESF Regulation).

[1] Article 65(1) CPR.

### ▪ **Temporary wage support for medical staff and officials in charge of containing the spread of the outbreak**

The temporary wage support for **doctors and medical staff pulled out of retirement for addressing the Coronavirus crisis** is eligible for support by the ESF if this is provided in the national eligibility rules. This is a measure required to ensure access to healthcare services.

The temporary wage support for **staff recruited for controlling borders and other officials in charge of containing the spread of the outbreak** are eligible for support by the ESF if this is provided in the national eligibility rules. These measures are **driven by the need to ensure access to the healthcare system** by containing and delaying the spread of the virus. The intervention logic and the aim of these measures is to ensure that the healthcare system does not implode and that the access to health services can be guaranteed during the entire duration of this crisis. These measures are crucial for containing the spread of the virus and ensure that the healthcare services can still be provided to those who need them, including the most vulnerable.

These measures can be programmed under the investment priority on access to services set out in Article 3(1)(b)(iv) of the ESF Regulation. This can be done for as long it is necessary to achieve the objective of ensuring access to the healthcare system. It is also up to Member States to decide on the type of labour contract to be used depending on their legal framework.

### ▪ **Eligibility of medicines, medical devices and protective material**

**Medical devices and protective materials** can also be supported by the ESF. There is no need to make use of cross-financing under the investment priority on access to services. This can be explained by the fact that these actions are necessary in order to ensure that the healthcare systems remains accessible, including for the most vulnerable. They can also be supported under cross-financing[2].

[2] Article 98(2) CPR.

### ▪ **Who can benefit from prevention measures?**

Prevention measures (awareness raising and provision of medical equipment such as masks, gloves, etc) can be provided **to all** as this is crucial in order to contain the spread of the virus and ensure that the healthcare system remains accessible. It can be supported by the ESF under the investment priority on access to services (Article 3(1)(b)(iv) ESF Regulation).

<b>IT</b>	Can ESF fund the distribution of prevention measures (awareness raising and provision of medical equipment such as masks, gloves, etc.) to third country nationals (and EU citizens), independently from their residence status? (i.e. under access to services investment priority)?
<b>RO</b>	<p>The scope of ESF investment priorities is broad enough to cover any response measures following the unexpected situation created by CORONAVIRUS. Under ESF RO envisage to finance operations by modifying Human Capital Operational Programme 2014-2020 at the level of priority axis 3 and 4, in order to support activities like the ones listed below, as:</p> <p>Support for essential health programs and services with a strong component focused on prevention, early detection (screening), early diagnosis and treatment of priority pathologies (eg. cardiovascular disease, cancer, diabetes, COPD, chronic kidney disease, hepatitis chronic, tuberculosis, HIV-AIDS, pandemic diseases as COVID – 19). .. and within the 10% ERDF be financed exclusively medical devices (respirators) and protective materials (masks, protective suits. Is that possible?</p>
<b>BG</b>	In the joint letter of Commissioners Ferreira and Schmit to Member States on the CRII and EUSF support, it is stated that Structural Funds could provide extended support through the financing of medicines, testing and treatment facilities. We would like to receive more clarifications and specifications on the scope and from which Fund these could be financed, especially in terms of the eligible medicines to be purchased (at least, so far there is no widely acknowledged and certified medicine/treatment for COVID-19).
<b>EE</b>	<p>On the present scope of the ESF Regulation we would ask confirmation that it is possible to grant:</p> <p style="padding-left: 40px;">Temporary wage support for doctors and other medical staff pulled out of retirement temporarily to</p>

	<p>help with crisis efforts.</p> <p>2. Temporary wage support for engaging border guards and other officials in charge of containing the spread of the outbreak.</p>
<b>RO</b>	Can we support health services aimed at this type of epidemic pathology, as well as expenses for temporary employment of medical staff?

## **Transfers between funds**

### Transfers between funds

Transfers between the ERDF and ESF are possible as the Common Provisions Regulation does not determine the split between the ERDF and the ESF. It only contains an aggregate amount for the ERDF and the ESF by category of region.

For the ESF each Member State needs to ensure that the **ESF minimum share** is respected, i.e. the allocation to the ESF cannot be lower than this amount that is determined in accordance with the methodology set out in Annex IX CPR. There is **no minimum share for the ERDF**. It is therefore possible to make transfers between the ERDF and the ESF as long as the ESF minimum share is respected.

Transfers **cannot concern previous years**. This means that the transfers are now limited to the 2020 allocation.

Transfers between Funds (either within the same programme or between programmes) require a **programme amendment** which needs **to be approved by the Commission still in 2020**. Member States can submit the request for programme amendments later (after approval by the monitoring committee<sup>[1]</sup>) when the situation has become more stable. This has **no impact on eligibility** as the expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak will be eligible as of **1 February 2020** (as proposed by the Commission)<sup>[2]</sup>. The Commission commits to swiftly approve these programme amendments related to the Coronavirus crisis.

There is no need to first amend the Partnership Agreement. The Partnership Agreement will be updated following the annual update<sup>[3]</sup> in 2021.

**For the sake of completeness, it is recalled that transfers between categories of region** are possible up to a limit of 3% of the total appropriation for a category of region to other categories of region<sup>[4]</sup>.

**Transfers between, on the one hand, the Cohesion Fund and, on the other hand, the ERDF or ESF** are not possible as the budget for the Cohesion Fund (as well as for the ERDF and the ESF taken together) is fixed in Article 92 CPR and there is no provision in the CPR that allows these transfers.

[1] Internal rules of the monitoring committee generally allow for an approval by written procedure.

[2] COM(2020)113.

[3] Article 16(4a) CPR.

[4] Article 93(2) CPR.

<b>HR</b>	Implementation of Short term employment schemes - Croatia will finance it from unallocated ESF that covers 15% of needed funding. We would like to discuss possibility for financing/reallocation from other cohesion policy funds
<b>MT</b>	MT has a high absorption rate, the degree of flexibility is limited and none for the ESF. ESF envelope fully committed – question about flexibility of introducing a short-time work scheme
<b>LT</b>	Is it possible to transfer between the Funds - from ERDF, CF to priorities financed by ESF? What are the limits?

## **ESF Simplified Cost Options**

Approach for operations utilising SCOs

We would like to highlight that there are three sets of questions and answers, which have been published on the “1. Structural Funds – horizontal questions” page on the CRII platform, which are also applicable to the operations utilising SCOs.

These are the following:

- COVID-19 and Force Majeure
- ‘COVID-19 and Force Majeure – General
- Eligibility & Flexibility
- Eligibility of expenditure for affected operations
- Flexibility to adjust affected operations

<b>PL</b>	The impact of the coronavirus COVID-19 on the implementation of the ESF projects is visible. PL understands that costs within projects connected with cancelled meetings and seminars are eligible in case of projects with real costs. However, it is not so obvious in case of projects, where SCOs (lump sums, flat rates, standard scale of unit costs) are used. The rules applied at EU level seem not to give the possibility to lessen the negative impact of the crisis for such beneficiaries. Can the Commission confirm what the approach is regarding SCOs?
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Use of unit costs set out in the Art. 14(1) delegated act in case of distance learning

- The Commission Delegated Regulation (EU) 2015/2195 / the Delegated Act Art. 14(1) does not establish a condition that the training has to take place in a classroom and that it cannot take place via distance learning. This is only specified in the 'fiches' which MS submit in view of the inclusion of an SCO in the Delegated Act.
- There is therefore no need to amend the Delegated Act to reflect that trainings can also take place via distance learning/e-learning. However, the fiches would need to be updated (to provide for this possibility following the COVID-19 outbreak and to set out the audit trail as the MA would need to be able to provide proof that the training occurred and that the employees took part in it).

DG EMPL has already received updated fiches and is assessing them.

<b>CZ</b>	Article 14(1) unit costs on training of employees - given the current situation, the Czech authorities would like to use unit costs from the Delegated Act also for distance trainings (using videoconference tools allowing tracking of participants and keeping logs). However one of the conditions for the use of these unit costs, as outlined in their fiche, is that the unit costs cannot be used for distance trainings (online, e-learnings).
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Continuation of financing for classroom trainings in distance learning mode

**For the unit costs for Portugal set out in Commission Delegated Regulation (EU) 2015/2195 (training for public sector employees)** it is to be noted that there is no restriction in the text of the delegated regulation that limits the training to classroom-type trainings. The way the training should be delivered is not specified in the text of the delegated regulation itself. The template/fiche submitted by the Member State describes in more detail the operations and audit trail, most notably. It also sets out how trainings will be delivered (i.e. classroom trainings) and that is the agreed way of implementing these trainings. These fiches can be changed to include operations that switch from classroom-type training to e-learning due to COVID-19 restrictions, upon mutual agreement between the Member State and the Commission, without the need to change the Commission Delegated Regulation. The Member State therefore needs to submit an updated fiche/template to the Commission which the Commission should agree upon.

**EU-level SCOs for training of unemployed people:** The situation is similar as described above, but there is one condition (footnote 6): *"The training courses can be primarily either institutional or workplace-based, but must be delivered at least partly in an institutional setting."* In our view, this is the case for trainings that have already started in a classroom and are now changed into e-learning/distance learning. The measurement unit for the indicator triggering reimbursement by the Commission remains unchanged, i.e. the "Number of participants who have successfully completed a training course".



**EU-level SCOs for training of employees:** The situation is similar to the unit costs for Portugal. The Commission Delegated Regulation does not specify that the training needs to take place in a classroom. For ongoing operations, switching to e-learning is possible and the measurement unit for the indicator triggering reimbursement remains unchanged.

1. *Number of completed hours of training to employed persons per participant.*
2. *Number of hours of salary paid to employees while on a training course.*

*Footnote: As demonstrated by a verifiable time management system.*

For the sake of completeness, your attention is also drawn to the [Q&A on flexibility to adjust affected operations](#).

<b>PT</b>	<p>As a consequence of the measures to prevent the proliferation of COVID-19, namely restrictions to the circulation of people, new forms of work namely teleworking have been introduced. This has consequences in the way that trainings are organized as it is no longer possible to be in classrooms. Considering that the e-learning training modality, is an excellent tool in the current context, as it promotes social distance, we would like to ask about the use of SCOs in these situations, in particular:</p> <p>a) Is it possible to continue to finance training operations with the SCOs established under delegated acts, if the training will no longer take place in the classroom and will it be carried out in a distance training regime (e-learning), in situations where the participants are in teleworking regime in consequence of the unprecedented circumstances we are facing?</p> <p>b) If the answer is positive, what procedures should be adopted to formalize this situation and obtain the Commission agreement/approval?.</p>
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## 3. Fund for European Aid to the Most Deprived

- Created by [Nathalie COLLIN](#), last modified by [Louise REID](#) on [Apr 29, 2020](#)

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How can the FEAD help Member States to face the Coronavirus crisis?

The Commission proposed an amendment of the FEAD Regulation on 2 April 2020 [\[1\]](#). This amendment will ensure that the most deprived can continue to receive assistance by the Fund in a safe environment.

It provides for sufficient flexibility for Member States to adjust the schemes of support to the current context, including by allowing alternative schemes of delivery eg through electronic vouchers [\[2\]](#) and by allowing Member States to amend certain elements of the operational programme for the distribution of food/basic material assistance without requiring an adoption by Commission decision.

All FEAD expenditure for operations fostering crisis response capacities in the context of the Coronavirus outbreak are eligible as of 1 February 2020. These actions can be financed from that date.

This proposal makes it possible to provide the necessary protective materials and equipment to partner organisations outside the technical assistance budget.

The proposal also allows Member States to benefit from a co-financing rate of 100%, upon their request, for the next accounting year (1 July 2020-30 June 2021)

The proposal includes specific provisions regarding the eligibility of costs incurred by beneficiaries in case the delivery of food/basic material assistance is delayed as well as for suspended and not fully implemented operations.

Finally, it reduces administrative burden for MS, allowing them to focus on the response to this crisis, by allowing for lighter monitoring, audit and control requirements during this period.

Above changes come on top of the package of financial and economic measures to tackle the effects of the Coronavirus emergency - also known as Coronavirus Response Investment Initiative (CRII). The latter, which entered into force on 1 April 2020, extended the scope of support of the ERDF, providing immediate liquidity and giving flexibility in programme amendments.

On 23 April 2020 the co-legislators adopted the Commission proposal (Regulation (EU) 2020/559) which enters into force on 25 April 2020<sup>[3]</sup>. This Regulation allows for the use of vouchers and cards which are not electronic.

<sup>[1]</sup> COM(2020)141.

<sup>[2]</sup> The co-legislators also allow for the use of other forms of vouchers.

<sup>[3]</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2020.130.01.0007.01.ENG&toc=OJ:L:2020:130:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.130.01.0007.01.ENG&toc=OJ:L:2020:130:TOC)

#### Eligibility of Expenditure

The Coronavirus crisis entails specific risks for the most vulnerable, in particular the most deprived. Therefore, specific measures should be taken to protect the most deprived from falling victim to this disease and to ensure that the social assistance provided to this group is not disrupted due to the Coronavirus crisis. This includes the provision of food and basic material assistance to the most deprived, which is supported by the FEAD.

To this purpose, the FEAD technical assistance can be used to reinforce the administrative capacity of partner organisations and public authorities involved in the implementation of FEAD measures in order to ensure that:

- (1) the support provided by the FEAD is not disrupted due to fears of contamination and,
- (2) that the most deprived can receive the support without being at risk of being contaminated.

In this context, Member States can, for instance, use FEAD technical assistance for purchasing the necessary material to ensure that the provision of food and assistance to the most deprived takes place in a healthy environment (hygiene products, such as soap, disinfectant, masks and health and safety products, such as shielding devices). These products can be used by the volunteers during the implementation of the operation but can also be provided to the most deprived. Besides being used for purchasing the necessary material to ensure the safety of people involved in the distribution of food and basic material assistance and the most deprived, technical assistance can also be used to change the **method of delivery** to the most deprived in order to ensure that there is no virus transmission during the process .

Moreover, the purchase of hygiene products for the most deprived, such as soap and hand sanitizers and masks, can also be supported by the FEAD outside technical assistance as these items are covered by the definition of basic material assistance set out in Article 2(1) FEAD Regulation, which also refers to hygiene goods. It should be noted, however, that this definition does not cover the provision of medicine.

In addition to this support, all the measures above can also be supported by the ESF, including by ESF technical assistance or under the investment priority set out in Article 3(1)(b)(iv) ESF Regulation on “access to services, including healthcare services” or even under thematic objective 11 (the latter only for the volunteers).

The ESF is a valuable instrument that can be used in the fight against the Coronavirus crisis. Measures aimed at preventing the spread of the virus by Member States can be funded in order to ensure that all citizens, including the most deprived, have access to healthcare systems. In this context, the ESF can be used to implement additional measures for ensuring the safety of citizens, including the most deprived as well, which are not eligible under the FEAD (e.g purchase of medicine or health equipment for hospitals and other health care services). These measures can be supported under the investment priority set out in Article 3(1)(b)(iv) ESF Regulation on access to services, including healthcare services.

Taking into account the limited amount of resources under the FEAD, notably compared to the ESF, broadening the definition of basic material assistance to cover also medicine and other health related products, could put at risk the provision of food and other basic material assistance to the most deprived. Therefore, besides not being needed, it should not be supported as it could have unattended consequences for the most deprived.

- **Eligibility of individual protection tools eg gloves, masks, disinfecting liquids etc.**

The Commission adopted on 2 April 2020 a proposal amending Regulation (EU) No 223/2014 (FEAD Regulation), in order to allow Member States to take the necessary steps to ensure a quick response to the COVID-19 outbreak in the context of the FEAD. On 23 April 2020 the co-legislators adopted the Commission proposal (Regulation (EU) 2020/559) which enters into force on 25 April 2020<sup>[1]</sup>.

According to Article 27(4) FEAD Regulation, Member States may use technical assistance to reinforce the capacity building for partner organisations. In this context, Member States may use technical assistance to purchase all the necessary equipment that allows partner organisations to continue distributing food and basic material assistance to the most deprived. This includes the distribution of sanitary items and protective equipment to staff distributing the food but also to end recipients as this ensures that they can continue to receive support without a risk of being contaminated with the COVID-19. It should be noted however that Member States can also use the FEAD outside technical assistance to buy these items for end recipients, as hygiene goods are considered as “basic material assistance” for the purposes of Article 2(1) FEAD Regulation.

The amendment to Article 26(2)(a) FEAD Regulation, allows public authorities to purchase personal protective materials and equipment for partner organisations, besides the purchase of food and/or basic material assistance.

The Commission considers that public authorities can more easily purchase protective equipment, through public procurement, than partner organisations. Currently – due to the lack of availability of protective of equipment, such as masks, for sale - it is very difficult for partner organisations to purchase protective equipment themselves. Therefore, instead of increasing the flat rate under Article 26(2)(c) FEAD Regulation, which covers the costs of partner organisations, the Commission opted to allow Managing Authorities to purchase the masks for partner organisations in addition to other support provided to partner organisations under technical assistance.

Indeed the Commission confirms that it is also possible to fund personal protective equipment for FEAD partner organisations under FEAD technical assistance, as they are measures necessary for the implementation of the Fund. They can also be considered as

capacity building measures as these are measures that reinforce the capacity of people distributing food to carry out their functions without putting at risk their lives and the lives of those who receive support. In addition, in principle, an amendment of the OP is not required as the content of the OP with regard to technical assistance is not exhaustive (according to Article 7(4)(c) FEAD Regulation the OP only has to include a description of the planned use for technical assistance, including actions to reinforce the administrative capacity of the beneficiaries).

Therefore, in light of the ceiling for technical assistance, the Commission decided to introduce the possibility for Member States to purchase protective equipment for partner organisations also outside technical assistance.

Moreover, it should be noted that by increasing the eligible costs under Article 26(2)(a) FEAD Regulation, this also has a positive impact on the eligible costs for partner organisations. Although the flat rate of 5% under Article 26(2)(c) FEAD Regulation has not been increased, partner organisations will be able to receive more funding as the 5% flat rate set out in Article 26(2)(c) FEAD Regulation is calculated on the totality of costs set out in Article 26(2)(a) FEAD Regulation (i.e. food/basic material assistance and protective equipment).

Finally, Regulation (EU) 2020/559 also allows Member States to quickly implement these measures, even in case they would require an OP amendment. Although according to our assessment, in most cases, an amendment of an OP is not necessary, the amendments the FEAD Regulation provide that:

- The expenditure in relation to operations fostering crisis response capacities in the context of the Coronavirus outbreak is eligible as of 1 February 2020.
- Moreover, in case they require an amendment of OP, besides being eligible as of 1 February 2020, the amendment of the OP is not subject to Commission decision.

[1] [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2020.130.01.0007.01.ENG&toc=OJ:L:2020:130:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2020.130.01.0007.01.ENG&toc=OJ:L:2020:130:TOC)

<b>IT</b>	Can any of these measures already be funded under the FEAD Regulation or is an amendment of the FEAD Regulation required?
<b>LT</b>	The MA wants to protect the beneficiaries and volunteers from the risks related to COVID-19 and therefore suggests to buy some individual protection tools (gloves, masks, disinfecting liquids etc.) <u>from the technical assistance</u> . The question is whether such expenditure could be treated as eligible?
<b>PL</b>	It turns out to be difficult to use TA for purchase of protective devices for FEAD partner organisations (gloves, masks, etc.). Would it be possible to temporarily increase the flat rate under Article 26 (2) c for organisations from current 5% to 7% of value of food delivered? This procedure would be the easiest and the

fastest to implement.

EL

Can Technical Assistance be used to purchase and distribute such health/sanitary items or is technical assistance strictly to be used for the material for the distribution staff?

Eligibility of Most Deprived

If we understand correctly the question, RO would like to consider any person in quarantine or at risk of exposure as most deprived, irrespective of their economic condition. Although the definition of “most deprived” set out in Article 2 FEAD Regulation determines that it is up to the Member State to define the most deprived persons (“natural persons, whether individuals, families, households or groups composed of such persons, whose need for assistance has been established according to the objective criteria set by the national competent authorities in consultation with relevant stakeholders...”), this definition should be in line with the objectives of the FEAD as set out in Article 3 of the FEAD Regulation. In this context, Article 3(1) FEAD Regulation determines that the specific objective of the FEAD is to contribute to alleviating the worst forms of poverty and its specific objective, by providing non-financial assistance to the most deprived.

Therefore, the national definition set out by Member States cannot disregard the specific objective of the FEAD and must take into account the economic situation (poverty) of the persons.

- **Modifying/ expanding the target group**

As explained above, the FEAD Regulation is quite flexible as regards the definition of the target group in the OP. According to Article 2(2) FEAD Regulation, it is up to the Member State to define the most deprived persons in accordance with objective criteria, provided that these are in line with the objectives of the FEAD set out in Article 3-FEAD Regulation.

Art 7(2)(c) FEAD Regulation stipulates that the OP shall set out a description of the mechanism setting the eligibility criteria for the most deprived persons. It does not determine that the target group is defined or specified in the OP. Therefore, provided that the OP does not establish any limitation to the definition of the target group (in some MS, the OP is stricter and already indicates that only certain target groups will be supported) and provided that the mechanisms to define the target group as set out in the OP are respected, changes to the definition of the target group do not require an OP modification.

To conclude, the new group could be immediately eligible, provided it is in line with the description in the OP and in accordance with national eligibility rules.

Regulation (EU) 2020/559 amending the FEAD Regulation allows Member States to take the necessary steps to ensure a quick response to the COVID-19 outbreak in the context of the FEAD.

- **Compliance with eligibility rules**

Regulation (EU) 2020/559 introduces relevant amendments to Article 9(4) and Article 22(4) FEAD Regulation. According to these provisions, in case a Member State needs to amend

certain elements of the OP due to respond to the COVID-19 outbreak, the modification of these elements is not subject to adoption by the Commission. This includes the modification of the description of the mechanism setting out the eligibility criteria for most deprived persons. Moreover, expenditure with operations to address the COVID-19 crisis is eligible as from 1 February 2020.

Therefore, although the Managing Authority needs to amend the OP (and notify it to the Commission, in accordance with Article 9(4) FEAD Regulation), **the expenditure for these end recipients (which currently do not meet the eligibility criteria set out in the OP) is eligible as from 1 February 2020.**

- **Aid to undocumented migrants**

It is understood from the background that the question relates to seasonal agricultural workers without work permit and residence permit.

According to Article 2(2) FEAD Regulation, it is up to national authorities to define the “most deprived persons” to be supported under the FEAD, in accordance with objective criteria. Provided that this definition is in line with the objectives of the FEAD set out in Article 3 FEAD Regulation – i.e. the definition should take into account that the objective of the FEAD is to eradicate poverty and to alleviate the worst forms of poverty – it may cover also seasonal workers who do not have a work permit and a resident permit. To conclude, seasonal workers may be eligible for funding if they are covered by the national definition of most deprived.

Finally, it should be assessed as well whether this support is in line with the elements set out in the OP, notably whether the OP allows the distribution of basic material assistance. It should be noted, however, that the Regulation (EU) 2020/559 allows expenditure for operations addressing the COVID-19 crisis to be eligible as from 1 February 2020 before the OP is amended. Moreover, modification of certain elements of the OP which are linked to COVID-19 crisis, is not subject to Commission decision.

RO	Following the COVID crisis, Romania wants to use FEAD to support people in quarantine, by considering them most deprived. Would this be possible? In the OP we do have the group of beneficiaries in critical situation as most deprived. However, in the OP, this group is selected by the social assistants. In the COVID case, they wonder if the certificate from a doctor would be enough for being considered most deprived?
EE	Is there any flexibility foreseen in the FEAD Regulation to modify/expand the target group without too long procedures, if necessary?
ES	Due to the alert state in our country, a number of end recipients will not be able to comply with the eligibility rules stated in the Operational Programme, namely: the social report delivered by the social services.

**IT**

Can aids, including hygiene goods, be distributed to undocumented migrants?

Eligibility of Operations

In response to the COVID-19 crisis, a new paragraph 4a to Article 23 FEAD Regulation was introduced which allows Member States to deliver food and/or basic material assistance also indirectly, such as through vouchers or cards in electronic or other form, provided that such vouchers, cards or other instruments can be exchanged only against food and/or basic material

Moreover, in accordance with Article 22(4) FEAD Regulation (as amended), expenditure for food and/or basic material assistance distributed with electronic or other forms of vouchers will be eligible as from 1 February 2020.

**FR**

Under the current circumstances, food distribution in public places/street is getting increasingly difficult due to restrictions for people to gather. An alternative would be to introduce vouchers so that people can purchase food in the supermarket. Are vouchers still not allowed under the 2014-20 programmes?

Programming

The FEAD Regulation requires in its operational programme to set out the criteria for the selection of the partner organisations (Article 7). Therefore, new beneficiaries can be included in FEAD delivery, without OP amendment provided that the selection of the partner organisations is in line with the selection criteria set out in the OP.

Nevertheless, the amended Article 9(4) FEAD Regulation, allows that the amendment of certain elements of an OP I aimed at addressing the COVID-19 outbreak, does not require approval by Commission decision. This includes the elements of the OP set out in Article 7(2)(e), i.e. the criteria for the selection of partner organisations. Moreover, similar to the new provision for the ESI Funds, a new subparagraph in Article 22(4) FEAD Regulation provides that the expenditure for those FEAD operations that are fostering crisis response capacities to the COVID-19 outbreak are eligible as of 1 February 2020 (i.e. even before the OP is amended).

Where the Managing Authority selects new partner organisations, the Management Authority needs to ensure that they are fully familiar with the monitoring and audit requirements and conform to those.

**FR**

Other organisations currently not entitled to distributing FEAD products are being included as FEAD beneficiaries because they have lost their usual sources (supermarkets, restaurants, etc.) Are there specific rules or provisions to be respected?

**PL**

Resources



Regulation (EU) 2020/ 558 amending Regulation (EU) No 1303/2013 provides flexibility for transfers of resources under the Investment for Growth and Jobs goal between the ERDF, the ESF and the Cohesion Fund (Article 25a(2) CPR) in response to the COVID-19 crisis. However, this provision explicitly determines that these transfers shall not affect the resources allocated to the aid to the most deprived under the Investment for Growth and Jobs Goal in accordance with Article 92(7) CPR.

The FEAD annual allocations by Member State are set out in Commission Implementing Decision 2014/190/EU.

It is also not possible for Member States to have a multi-fund operational programme supported by the ESF and the FEAD, because the FEAD is not regulated by the Common Provisions Regulation. This possibility is also not provided for in the FEAD Regulation.

Nevertheless, it should be noted that Member States may use the ESF to support many measures which help the most deprived during the COVID-19 crisis. For instance, the ESF may provide support to measures reinforcing the capacity of NGOs and public authorities providing assistance to the most deprived (it may help authorities to adjust their ways of providing assistance to the most deprived, it may support the purchase of protective equipment, etc). Moreover, it may also provide support to the most deprived by enabling them access to health care services.

**BG**

Can we transfer money from ESF to FEAD or make a multifund ESF- FEAD OP to help address the crisis situation for the most vulnerable with food and material support?

Financial Management

Article 60 FEAD Regulation, which provides for exceptions to decommitment in accordance with Article 59, already allows exception to decommitment in case it has not been possible to make a request for payment for reasons of force majeure seriously affecting implementation of all or part of the programme.

The national authorities claiming force majeure have to demonstrate the direct consequences of the force majeure on the implementation of all or part of the operational programme.

In Union law, the notion of 'force majeure'<sup>[1]</sup> generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. When Union law refers to reasons of 'force majeure', all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated on a case-by-case basis. Force majeure is a term of rather restricted scope.

At the end of a year N+3 (and outside the decommitment at closure), a reduction of amounts concerned by decommitment for which no payment application was made could be applied provided that the conditions of Art. 60 (1)(b) FEAD Regulation are fulfilled.

The fact that no payment application (or sufficient expenditure could be included in a payment application in order to avoid decommitment in accordance with Article 59 FEAD

Regulation) could be made due to the specific Coronavirus outbreak could be regarded as circumstances of “force majeure”. As this depends on the specifics of the cases at stake, it would require an analysis on a case-by-case basis. Although the application of “force majeure” requires an analysis on a case-by-case basis (in order to determine whether all its conditions are fulfilled), taking into account the nature of operations supported by the FEAD, the impact of the COVID-19 outbreak on operations is easy to demonstrate. The procedure is the one provided in Article 61 CPR.

#### *FEAD Regulation Article 60*

##### *Exception to the decommitment*

1. *The amount concerned by decommitment shall be reduced by the amounts equivalent to that part of the budget commitment for which:*

*(a) the operations are suspended by a legal proceeding or by an administrative appeal having suspensory effect; or*

*(b) it has not been possible to make a request for payment for reasons of force majeure seriously affecting implementation of all or part of the operational programme. ▼B*

*The national authorities claiming force majeure under point (b) of the first subparagraph shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the operational programme.*

*For the purpose of points (a) and (b) of the first subparagraph, the reduction may be requested once, if the suspension or force majeure lasted no longer than one year, or a number of times that corresponds to the duration of the force majeure or the number of years between the date of the legal or administrative decision suspending the implementation of the operation and the date of the final legal or administrative decision.*

In addition, the new Article 26a FEAD Regulation, establishes that delays in the delivery of food and/or basic material assistance do not lead to a reduction of the eligible costs: These costs may be declared to the Commission in accordance with Article 26(2) FEAD Regulation before the food/basic material assistance is delivered to the most deprived provided that the delivery is resumed after the COVID-19 crisis is over.

Finally, given the possibility provided by the new provision in Article 20(1a) FEAD Regulation to request for the application of a 100% co-financing rate during the accounting year starting on 1.07.2020 and ending on 30.06.2021, the risk of decommitment should be reduced.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case [145/85 Denkavit België \[1987\] ECR 565](#), paragraph 11; Case [C-377/03 Commission v Belgium \[2006\] ECR I-9733](#), paragraph 95; and Case [C-218/09 SGS Belgium and Others \[2010\] ECR I-2373](#), paragraph 44

**FR** As certification of expenditure is slowed down significantly under teleworking conditions, the payment deadlines to keep n+3 target will not be met.

Does the EC envisage to allow for exceptions to the n+3 rule?

Management & Control

- **Audit Requirements - proof of delivery**

It is up to the Member State to establish how the proof of delivery of food and/or basic material assistance is made. Moreover, according to Article 58(2) FEAD Regulation the audit trail does not cover the distribution to the end recipient. Moreover, it is up to the Member State to establish how the proof of delivery of food and/or basic material assistance is made.

Regulation (EU) 2020/559 amending the FEAD Regulation introduces specific provisions providing flexibility for Member States to adjust control and audit procedures during the COVID-19 outbreak. Concretely, a new paragraph 1a is introduced in Article 30 FEAD Regulation, that determines that Member States may introduce lighter control and audit trail requirements during the outbreak, based on a risk assessment.

Therefore, it is possible to adjust the current control and audit procedures in view of the current emergency context, for instance by basing the proof of delivery on (i) the proof of delivery to the C.O.C. and an ex post declaration of delivery by the C.O.C or by the Municipality or by replacing on the spot checks by desk controls.

- **Audit requirements- tracking of the products**

A new provision in the FEAD Regulation introduces specific provisions providing flexibility for Member States to adjust control and audit procedures during the period of the COVID-19 outbreak. Concretely, a new paragraph 1a is introduced in Article 30, which determines that Member States may introduce lighter control and audit trail requirements during the outbreak, based on a risk assessment.

Therefore, both the audit authority and the managing authority may introduce lighter procedures during the COVID-19 crisis.

**IT** With the health emergency Covid-19 many volunteers for age reasons can no longer carry out the usual distribution activity and this has meant the temporary closure of some OpT (territorial partner organisations). This has led to a build-up of stock (milk) with the risk that they will not be distributed before the expiring date (April) and there is also a danger of not being able to help people in need.

If we manage to ensure distribution to the most deprived persons through the municipal operational centres (COC) instead this would make it possible to use, on the one hand, aid within the expiring date, avoiding

	<p>the risk of food waste; on the other hand, it would be possible to reach out to people who, due to the effects of the emergency, see the need for them worsen. In such cases, the traceability of the product could be ensured.</p> <p>However, in this respect we cannot guarantee to trace the distribution to the end recipients. Is this acceptable ?</p>
<b>FR</b>	<p>Food distribution is getting more and more difficult, due to the fact that usual voluntary staff (elderly) had to be replaced by young and untrained people. As a result the bookkeeping/recording regarding the products received and distributed is suffering, and may even be dropped temporarily as a result of the need to concentrate human resources on distribution (no time nor staff for recording). Thus the tracking of the products / audit trail will no longer be guaranteed. Will there be flexibility in this respect from the EC?</p>
<b>ES</b>	<p>The special preventive measures put in place are making it difficult to keep the proof of delivery to the end recipients. All on-the-spot checks to distributing points are suspended. Can these above situations be accepted on the basis of force majeure COVID19 without further action?</p>

## 4. European Regional Development Fund

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) on [May 06, 2020](#)

***The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.***

### **General, scope**

Scope of support under ERDF Article 5(1)(b) ERDF Regulation

The Commission's proposal for Article 5(1)(b) of the ERDF Regulation proposes for this investment priority to cover also investments necessary for fostering the crisis response capacities in health services. This would cover any operation that ensures an effective response to a public health crisis in the context of COVID-19 outbreak. Support to the healthcare system includes, but is not limited to, investments in financing health equipment and medicines, testing and treatment facilities, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), medical devices, to adapt working environment in the health care sector and to ensure access to health care for vulnerable groups.

<b>IT</b>	The proposed modifications of art. 5.1 of ERDF Reg. introduces the possibility to support under IP 1.b the investments necessary to strengthen the crisis response capacities in the health services. Does it cover health expenditure?
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Crisis response under TO1 or TO9

The outbreak of COVID-19 has created an exceptional situation that requires exceptional response, mobilising all available resources. As not all MS currently have TO9 in their programmes, it was decided to expand the scope of TO1 to ensure all MS could benefit from it. The proposed investments necessary for strengthening the crisis response capacities are additional to the current scope of TO1. In accordance with Articles 2(33) and 19(1) CPR, ex ante conditionality shall apply only if it is a prerequisite for and has a direct and genuine link to, and direct impact on, the effective achievement of a specific objective for an investment priority. The ex ante conditionality on smart specialisation strategy is not a prerequisite for an effective response to the public health crisis and therefore it is not applicable to these investments.

It is as well possible to refocus resources to address the public health crisis within existing investment priorities of the other thematic objectives. For example, under TO9 the first investment priority under ERDF already covers investment in health and social infrastructure, which contributes to national, regional and local development, reducing inequalities in terms of health status. It may include as well investments supporting effective response to the public health crisis in the context of the COVID-19 outbreak.

<b>EE</b>	The actions related to the corona virus in the medical field shall be supported under TO1. Why is this the case? Why not TO9? Under TO1 there is an ex ante conditionality in the CPR on having a smart specialization strategy, which applies to all investment
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priorities under TO1. In addition the whole intervention logic of the relevant priority axis in our OP is based on being in line with the smart specialization framework. The actions addressing strengthening the crisis response capacities in health services does not seem to fall under the scope of PO1. Please explain. Are the actions considered eligible also under TO9?

Combination of grants and loans, possibility to have conditions linked to sectors, keeping employment

For SMEs, it is possible to finance mix of grants and loans, including **repayable assistance**, in line with the proposed Article 3(1) ERDF Regulation which would also allow to finance **working capital** through any form of support. (for definition of working capital: see reply to your other question "Supporting liquidity through reimbursement of interest payable")

It is possible to have separate operations: one to provide loan (or other financial instrument, e.g. guarantee) and the other(s) to provide grants, but if both channels are to be supported by EU funds, such a set up would be more complex than using the 'repayable assistance' model, which is a distinct form of support under Article 66 CPR, which allows to combine repayable and non-repayable form in a flexible manner.

It is up to national authorities to decide the share of repayable and non-repayable component within an operation in the form of repayable assistance, and this mix may depend on a sector and/or on the amount to be repaid, or on a clause that no employees are laid off for those companies receiving the aid. See: [Guidance for Member States on Definition and use of repayable assistance in comparison to financial instruments and grants](#).

For large enterprises, working capital support to cover such salaries expenditure would be eligible from ERDF only if provided in the form of financial instruments. See: [financial instruments guidance on working capital](#).

**EL** Provision of a mix of direct grants and/or financing to companies recording large drops in turnover as a result of the Coronavirus and with large employee bills. We would like to differentiate by sector, and include the proviso that no employees are laid off for those companies receiving the aid.

Supporting liquidity through reimbursement of interest payable

Provision of liquidity to SMEs in the form of a grant used to reimburse interest payable on their banking loans could be supported:

- as a grant operation, where these banking loans are not supported by the EU budget. Interest rate subsidy is eligible in line with Article 69(3)(a) CPR, which refers to "*grants given in the form of an interest rate subsidy or guarantee fee subsidy*". Eligible expenditure would be equal to the interest rate subsidy amounts.
- as part of a combination of a financial instrument with grants within a single financial instrument operation (where both forms of support are financed by ESI Funds or another instrument of the Union budget) and where both target the same final recipients – see [EGESIF 15 0012-02](#) for detailed guidance.

Liquidity is synonymous with working capital, which has already been defined broadly in the financial instrument context, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)).

Support to **working capital**, can also be used by the recipient SMEs to reimburse interests of loans. This type of support will be allowed in line with the proposed Article 3(1) of ERDF Regulation, if the beneficiary/final recipient is an SME, and if such support is necessary as a temporary measure to provide an effective response to a public health crisis and if such support is covered by the priority axis.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this must be verified in this specific case, as programme-specific conditions might need to be amended in order to cover such new actions. Neither working capital nor the specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible from 1 January 2014.

In case the programme needs to be amended to extend eligibility to cover the working capital, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to the public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.

In order to facilitate access for recipients of such support, the Member State may decide that the beneficiary is the body granting the aid in line with Article 2(10)(a) CPR.

<b>EL</b>	Provision of liquidity to small and medium enterprises in the form of a subsidy of interest payable on their banking loans for a period of three to five months, in sectors that have been significantly affected by the Coronavirus, for those loans that were performing as of end of last year.
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Lump sum grants

Lump sum grant support for *self-employed individuals* (sole traders) could possibly be supported under proposed Article 3(1) ERDF if such support is necessary as a temporary measure to provide an effective response to a public health crisis, if such scope is included in the OP and if they are SMEs.

*Self-employed individuals* (sole traders) could be considered SMEs as according to Article 1 of Annex I to [Commission Recommendation 2003/361/EC](#) an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. This includes, in particular, self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity

The CPR provides a flexible framework for how such measure could be implemented, in particular:

- If granted under *de minimis* rules, in line with Article 67(2a), as a general rule, the support based on lump sum as provided by Article 67(1)(c) is to be used, which should minimise the burden for the SMEs receiving support. [Guidance on simplified costs options](#), including lump sums, is available also in Greek; support in the form of a lump sum is also possible under the [Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#);
- In order to facilitate access for recipients of such support, the Member State may instead decide that the beneficiary is the 'body granting the aid' in line with Article 2(10)(a) CPR: in such a model, the SMEs receive the support, but are not considered beneficiaries which could reduce bureaucratic burden.

Managing authority should choose the method which is the most appropriate given the current situation.

<b>EL</b>	Possibility to finance from ERDF: 400 euro grant for self-employed (sole traders) in sectors that have been significantly affected by the virus for two months.
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Support to SMEs in the tourism sector – Article 3(1) ERDF regulation

With the amendment to Article 3 (1) of ERDF Regulation, the Coronavirus Response Investment Initiative (CRII) proposes to open ERDF support (also in the form of grants and repayable assistance) to working capital in SMEs as a temporary measure to provide an effective response to a public health crisis, with special attention on sectors, which are particularly hard hit. SMEs in the tourism sector are certainly among these. Currently, working capital in enterprises may be eligible under specific circumstances for support through financial instruments only, in accordance with Article 37(4) CPR, not covering emergency intervention, where the working capital would be supported in order to keep the enterprise on the market and maintain jobs.

Working capital could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)).

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this needs to be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. Neither working capital nor the specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects.

In case the programme needs to be amended to extend eligibility to cover the new scope, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to a public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.



In order to facilitate access for recipients of such support, the Member State may decide that the beneficiary is the body granting the aid in line with Article 2(10)(a).

<b>SE</b>	We have a crisis especially in the tourism area, SMEs are facing increasing difficulties, how can we use ERDF for support?
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Scope of support under TO7 as regards a vessel connection

In this geographical area, transport services are not eligible for CF/ERDF support; only investments in e.g. infrastructure and equipment. The Commission's proposal of an additional subparagraph in Article 3(1) ERDF Regulation, on supporting the working capital as a temporary measure to provide an effective response to a public health crisis, applies only to SMEs. Tallink, as a large enterprise, would not be eligible for such a support.

The Commission has requested that Member States implement a green lane approach in order to ensure that EU internal borders stay open to freight and that supply chains for essential products are guaranteed. Investment in infrastructure and equipment that facilitate the implementation of green lanes can be eligible for CF or ERDF support.

We highlight also that cohesion policy support remains available e.g. for the purchase and transport of urgent medicine and medical equipment.

As regards State aid, to facilitate MS adoption of adequate and quick measures, the priority of the Commission has been to design a temporary framework allowing different types of support, with lighter requirements to give MS the means to address different types of needs, while ensuring that the EU Internal Market is not fragmented and that the level playing field stays intact. Member States are therefore invited to use the possibilities of this Temporary framework to remedy a disturbance of their economy or to design measures on the basis of Article 107(2)(b) to compensate undertakings in sectors that have been particularly hit by the outbreak (e.g. transport, tourism, culture, hospitality and retail) and/or organisers of cancelled events for damages suffered due to and directly caused by the outbreak. In both cases, measures have to be notified. Notifications of schemes will have a quick and priority treatment, providing Member States use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu)

The link to the Temporary Framework is published on DG Competition constantly updated website, as well as already available templates of the information needed for a quick assessment of notified measures:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

<b>EE</b>	As reinstatement of border controls has resulted in bottlenecks and blockages at some borders along the TEN-T corridors, it has become necessary to create alternative solutions for maintaining security of supply of essential goods/cargo (incl. food (that would get spoilt fast), medical supplies, etc.) to where needed.
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As a temporary solution, a vessel connection (Motorways of the Sea) is being established connecting German and Estonian ports that would transport trucks in

both directions (and, to a very limited extent, passengers if necessary). Potential duration of this measure is estimated at 30 days. The majority of costs would be covered by transport companies, however, limited state subsidy is required in order to compensate the balance.

In our opinion, the need for this measure (and for the public sector subsidy) is clearly related to Covid-19 crises, is temporary and proportional, and should qualify as a crises measure, so it should be considered eligible Cohesion Fund or ERDF. Do you agree with this approach?

This is support for Tallink (large enterprise) to operate between Paldiski-Sassnitz (the North Sea – Baltic Sea TEN-T Core Network Corridor) necessary due to cargo blockages (including for critical goods) in the Polish borders. The ticket sales do not cover the costs to operate the temporary line, which is critical to ensure security of supplies and the functioning of the internal market. It may also be relevant for funding from CEF, so please take that option also on the table in cooperation with DG MOVE.

SMEs: investment costs and operating costs after implementation phase

Costs of the investment/innovation activities, including related remuneration and indirect costs related to the investment have been eligible under Article 3 of ERDF Regulation, e.g. as productive investment in SMEs (Article 3(1)(a) of ERDF Regulation) or investment in business/innovation infrastructure (Article 3(1)(d) ERDF Regulation), since 1 January 2014.

This support could be combined with support in the form of working capital (in addition to categories already included in the investment costs). 'Working capital' in this context is synonymous with operating costs. 'Working capital' could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour (remuneration); inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)).

Support **in the form of grants or repayable assistance** to cover the costs of working capital, in line with the new sub-paragraph of Article 3(1) of ERDF Regulation, is eligible if the company is an SME, and if such support is necessary **as a temporary measure to provide an effective response to a public health crisis**. The temporary nature means that the period during which such support is provided is to be defined in relation to the crisis, and as a general rule should not extend to the whole durability period. The period in which working capital in these forms is supported may include the implementation phase, as well as the period before and after it, in any combination (including only after implementation, if the project is already implemented). In line with Article 65(1) CPR, the specific modalities should be determined on the basis of national rules and, wherever relevant, in compliance with the applicable State aid rules.

When providing such comprehensive support, please ensure that the same costs are not supported twice, which could be a risk especially when investment support is provided separately from the support for working capital. In order to avoid any audit issues, working capital should exclude any costs already covered by flat-rate financing for indirect costs in line with Article 68 or other investment costs.

For **the support in the form of financial instruments**, working capital has already been eligible and continues to be so, also outside of the specific conditions introduced by the new provisions of Article 3(1) ERDF Regulation. In line with Article 37(4) CPR financial instruments may target both implementation of new projects as well as strengthening the general activities of the SMEs, which does not preclude that such support covers both the implementation phase and any part of the durability period.

<b>PL</b>	Are you considering: the inclusion of the possibility of qualifying investment operating costs, remuneration costs, investment / innovation activities at the enterprise level, <b>indirect costs</b> both during the project implementation phase and during the project durability, so as to facilitate the beneficiaries to complete the implementation of the investment, as well as to maintain their effects, including the maintenance of newly created jobs?
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Use of specific additional allocation for outermost regions for CRII

The specific additional allocation for outermost regions is part of the ERDF allocation. Article 12 ERDF regulation specifies for which cases the specific additional allocation can be used. In accordance with Art 12(1)(c) ERDF Regulation, this allocation shall be used to offset the additional costs supporting the operations to address the lack of human capital in the local market. Thereby, working capital in SMEs as laid down in Article 3(1) of ERDF regulation, would be eligible.

As regards investment in health services, in accordance with Article 12(1), specific additional allocation for outermost regions shall be used to offset the additional costs incurred in the outermost regions in supporting any of the thematic objectives set out in Art 9 CPR. Therefore, as laid down in Art 5(1)(b) ERDF Regulation, defining the second investment priority under the TO1 to be supported by the ERDF, also fostering investment necessary for strengthening the crisis response capacities in health services is eligible under the additional allocation for outermost regions.

<b>FR</b>	Is the specific allocation for outermost regions eligible for CRII actions?
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Support to companies in the health sector

As regards the extended investment priority under TO1 in line with the amended Article 5(1) of the ERDF Regulation, targeting investments necessary for strengthening the crisis response capacities in health services, may cover hospitals, irrespectively of their legal set-up, including in case they are set up as a public sector company or private hospitals. The explanatory memorandum to the amending [Regulation 2020/460](#) and recital (4) of that Regulation provide that "*the ERDF investment priority to strengthen research, technological development and innovation should cover investment in products and services necessary for fostering crisis response capacities in public health services*". Therefore, Article 3(1) of ERDF Regulation should be, in relation to the specific opening for TO1, interpreted as providing the necessary scope to such investments even if not explicitly covered by the text of the provision.

Companies in the health sector, such as those participating in the supply chains of products and services relevant to combating the pandemic, would primarily benefit indirectly thanks to increased demand and financing provided to purchase their products and services. The

costs related to establishment of increased volume of production, including costs of investments and labour costs, would normally be recovered with the profit received from selling the products. Therefore, as a general rule, there should not be any need for public support.

However, support to such companies is not *a priori* excluded if one can demonstrate that it is necessary to provide an effective response to the public health crisis and other applicable conditions (e.g. concerning selection of operations) are satisfied. In such a case, companies in health sector could receive financing for working capital (short-term liquidity) in the form of financial instruments (given profitability of such investments, the recommended form of public support if the support is needed at all), or if they are SMEs, they could receive support for working capital also in the form of repayable assistance or grants, in line with the amended Article 3(1) of ERDF Regulation.

Productive investments of companies in the health sector (e.g. pharmaceutical companies, producers of equipment etc.) are not ‘health services’ referred to in the amended Article 5(1) of ERDF Regulation, but such investments are eligible under TO1, in line with Article 3(1)(b) of ERDF Regulation.

It should be noted that the legislative framework for the implementation of the ESI Funds programmes remains fully applicable even under the current exceptional circumstances. Therefore, the national authorities when adjusting the ongoing operations or launching new calls for proposals, have to ensure compliance with existing rules, including provisions on selection of operations as laid down in Article 125(3) CPR and the scope of support from the ERDF as laid down in Article 3 ERDF Regulation (as modified by [Regulation \(EU\) 2020/460](#)).

<b>DE</b>	The scope of support of ERDF is extended to “a public health crisis” (Article 3(1)) and the investment priorities to “investments necessary for strengthening the crisis response capacities in health services” (Article 5(1)(b)). Is it correct that companies in the health sector can also be supported and if yes, does this also include companies in the public sector like hospitals?
<b>PL</b>	Regarding companies participating in the supply chains of products and services relevant to combating a pandemic (eg. support for mask sewing SMEs) we would like to have your confirmation as far as the scope of eligible expenditure within a grant is concerned – there would be all costs related to establish increased volume of production, including costs of investments and labor costs.

Undertakings in difficulty

On 1 April 2020, [Regulation \(EU\) 2020/460 of the European Parliament and of the Council 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 \(Coronavirus Response Investment Initiative\)](#) entered into force. It amended Regulation (EU) No 1303/2013 (ERDF) insofar that it extended the scope of activities that could benefit from support from ERDF. The amended Article 3(1), last paragraph, provides for the possibility to support through ERDF the financing of working capital in SMEs, where necessary, as a temporary measure to provide an effective response to a public health crisis. In parallel, it amended Regulation 1303/2013 (CPR) including a derogation for expenditure for

operations for fostering crisis response capacities in the context of the COVID-19 outbreak that become eligible as of 1 February 2020.

Shortly before, on 19 March 2020, in accordance with Article 107(3)(b) TFEU the Commission adopted the [Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#) (the Temporary Framework) with the objective to facilitate public support to undertakings of all kinds that face a severe lack of liquidity. The [amendment to the Temporary Framework](#) was adopted by the Commission on 3 April 2020. The Temporary Framework sets out the compatibility conditions that the Commission will apply to the aid granted by Member States in accordance with Article 107(3)(b) TFEU, to remedy serious disturbance in the economy. Such State aid remains subject to Commission's clearance in accordance with Article 108(3)(c) TFEU and needs therefore to be notified by Member States. The Temporary Framework states that aid, whether in the form of grant, repayable advance or tax advantages, guarantee or a loan] may be granted to undertakings in difficulty, unless they were already in difficulty (within the meaning of the General Block Exemption Regulation) on 31 December 2019.

Article 3(3)(d) of the ERDF Regulation provide that "*undertakings in difficulty, as defined under Union State aid rules*" are not eligible for support from ERDF. The exclusion in scope laid down in ERDF Regulation was defined in reference to State aid rules with the objective to ensure consistency and alignment between the two set of rules and provide greater simplification for the managing authorities.

Therefore, for aid granted under the Temporary Framework the managing authorities will have to take account the **financial situation of companies on 31 December 2019 based on the GBER definition**. The same logic should apply for aid granted under the *de minimis* rules, where the managing authorities should take account of the financial status of the beneficiary only if required by the relevant *de minimis* rules.

On 2 April 2020, the Commission [proposed to amend Regulation \(EU\) No 1303/2013 and Regulation \(EU\) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the ESIF in response to the COVID-19 outbreak](#) to provide more legal certainty for this approach. The proposal includes an amendment to Article 3(3)(d) of the ERDF Regulation as regards undertakings receiving support in compliance with the State aid Temporary Framework or Commission Regulations (EU) No 1407/2013 , (EU) No 1408/2013 and (EU) No 717/2014. It expresses the Commission views that, in these specific circumstances, undertakings in difficulty should not be excluded from the scope of ERDF, if the aid is granted in compliance with the Temporary Framework, the general and the sectoral *de minimis* rules, whichever applicable. Note should be made that Commission Regulations (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 717/2014 have not been affected by the above legislative amendments or proposal for amendment and remain therefore fully applicable.

The Commission expects the co-legislators to deal swiftly with the file and move to rapid adoption.

<b>EE</b>	Can undertakings in difficulty be supported under the crisis measures? Why do restrictions in the ERDF Regulation as regards undertakings in difficulty remain in force while State aid rules will be relaxed in this respect?
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<b>IT</b>	The ERDF Regulation explicitly states that enterprises “in difficulty” are not eligible. The Italians propose that also these enterprises are eligible since 1.2.2020.
<b>EE</b>	The restriction, which excludes support to undertakings in difficulty has not been modified, thereby remains in force. The state aid framework does not exclude all aid to such enterprises ( <i>de minimis</i> aid has always been possible), but the ERDF regulation does. According to the draft Commission communication on “Temporary Framework for State Aid measures to support the economy in the current COVID-19 outbreak” the aid may be granted to undertakings which were not in difficulty on 31.12.2019 but entered in difficulty thereafter as a result of the COVID-19 outbreak. Hence, we assume that even if the Commission revises state aid guidelines and adopts a temporary framework on the context of this crisis, this restriction stays in force for ERDF and no aid whatsoever can be granted from the ERDF to undertakings in difficulty – not even guarantees via financial instruments or <i>de minimis</i> aid? Is this correct? If yes, please reconsider.
<b>UK</b>	Article 3(3)(d) ERDF Regulation indicates that the ERDF should not support undertakings in difficulty ‘as defined under Union State Aid rules’. This would be an issue in terms of supporting SMEs under the new Article 37(4) text, and also for our business support projects. This could either be addressed through a change to the General Block Exemption Regulation (most likely) or via a change to the ERDF Regulation. Such a change would mean that businesses that were trading adequately prior to the crisis but are affected by the current circumstances could be offered support to transition through the crisis.
<b>IT</b>	Taking into account the temporary nature of the interventions to be put in place, is it possible to confirm that ERDF support can be directed to ‘undertakings in difficulty’ as defined in the EC Communication on State aid related to the COVID emergency “(C (2020) 1863 final) (point 22.c)”, by way of derogation to Article 3(3)(d) of the ERDF Regulation No. 1301/2013?
<b>SK</b>	The question is if the Commission intends to amend the ERDF Regulation in the area of providing assistance to companies in difficulties, in connection to adoption of the Temporary framework for state aid measures in order to support the economy in the current situation caused by COVID-19 disease and reflect the situation also in providing aid, in 2021, to companies that have become companies in difficulties in 2020 as a result of the crisis caused by the coronavirus.
<b>BE</b>	The feasibility of extending the 1.1.2 financial engineering measure, ‘micro-credit’ (loans), from the ERDF OP 2014-2020 for Wallonia. The specific aim of this possible enlargement would be to respond directly to the cash-flow difficulties (working capital) for Walloon SMEs due to the binding measures resulting from the health crisis of the coronavirus. Although this measure is not directly included in the new temporary framework for state aid, ‘inclusion 19’, is it permissible to make use of the flexibility in the case of firms in difficulty (estimate on the basis of figures as at 31/12/2019) that the latter provides for the application of Article 3 (3) of the ERDF Regulation (exclusion from financing of firms in difficulty)? More generally, when ERDF funds of origin are used through financial engineering measures aimed at SMEs/VSEs affected by the health crisis of the health crisis of the inclusion of the 19 budget, can Article 3(3) of the ERDF Regulation (EC) No 1301/2013 (exclusion of

	firms in difficulty) be applied, taking into account the option given by the new State aid framework (estimate based on figures at 31/12/2019), at least until 31/12/2020?
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Categories of intervention related to COVID-19 measures

The question does not specify exactly what operations from the medical field are meant to be financed. In general, for this field, besides the standard codes (codes as referred to in the nomenclature for the categories of intervention set out in Annex I table 1 of the Commission Implementing Regulation (EU) No 215/2014 of 7 March 2014) for TO1 056-065, please use codes 053 and 081 for ERDF. In case of risk prevention and management of non-climate related natural risks, please use code 088.

<b>EE</b>	The Estonian operational programme does not include any indication that actions related to the corona virus in the medical field shall be supported under TO1 and the respective priority axis. There is no respective specific objective, no actions, no indicators. The nomenclature for categories of intervention does not seem to include a suitable category.
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Companies producing or buying medical equipment

For SMEs which are manufacturers in this sector, the support would normally be considered productive investment already eligible under Article 3(1)(a) ERDF. Large enterprises cooperating with SMEs can already be supported under Article 3(1)(b) ERDF. In addition, the amended Article 5(1)(b) ERDF Regulation makes it possible to finance "investment necessary for strengthening the crisis response capacities in health services". Health services could be understood broadly, and could include, when such support is justified, also manufacturing companies.

The Commission recommends careful assessment of the need to get public support for such manufacturing companies, and if this need is justified, e.g. in case a fast production expansion is needed, which could not be met by private financing, support for such companies in the form of financial instrument or repayable assistance should be preferred so as to ensure that the full ESIF-funded amount provided to such company is repaid back to the managing authority. See reply "Support to companies in the health sector" for details.

For companies which purchase protecting clothing, inhalers and short-term equipment (i.e. equipment, which is expected to be mostly depreciated over the period of the coronavirus crisis), such an expenditure would be eligible as working capital under the amended Article 3(1) ERDF Regulation (for all form of financing) and Article 37(4) CPR (for financial instruments). Equipment which is expected to be used longer than the crisis could usually already be eligible as part of productive investment for SMEs. The eligibility rules are decided at national level, and if in the same call for proposals also equipment is made eligible in all cases (in line with the programme – which can be amended if needed), there might not be any need to establish and verify which equipment is a part of working capital, and which falls outside, but is still needed to provide effective response to the health crisis.

<b>BG</b>	Support for eligible costs/activities for crisis management measures including: equipment; inhalers; protective clothing – can they target not only hospitals, but also
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	the companies that manufacture them and the companies that need to buy them?
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### Support to SMEs

The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to flexibly respond to the rapidly emerging needs. Furthermore, the Commission is open to discuss with Member States the best possible ways to use the European Structural and Investment Funds to mitigate the impact of the coronavirus crisis and intends to assign top priority to adopting all decisions needed for the fast deployment of funds, where needed.

As regards aid to SMEs, it is the new sub-paragraph of Article 3(1) ERDF Regulation, which should be most useful to provide an effective response to a public health crisis. The proposed provision makes it possible to finance working capital, also in the form of grants and repayable assistance.

'Working capital' could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)). Equipment, which is necessary to provide an effective response to a public health crisis and is expected to be mostly depreciated over the period of the health crisis and its aftermath, could also be included in the categories of expenditure for which the working capital could be used.

Support in the form of grants or repayable assistance to cover the costs of working capital, in line with the new sub-paragraph of Article 3(1) of ERDF Regulation, is eligible if the company is an SME, and if such support is necessary as a temporary measure to provide an effective response to a public health crisis and if such support is covered by the priority axis. For the support in the form of financial instruments, working capital has already been eligible and continues to be so, also outside of the specific conditions introduced by the new provisions of Article 3(1) ERDF Regulation.

Please note that you can support projects which combine different categories of expenditure, including those falling under working capital (for example, protective disposable equipment, cleaning of spaces etc.) and those which are investment expenditure (for example, equipment for employees, etc. depreciated over a longer term and needed for the business continuity). Equipment or other investment expenditure **could already be eligible under Article 3 ERDF Regulation**, e.g. as productive investment in SMEs or investment in business infrastructure (Article 3(1)(d) ERDF Regulation).

In addition, following the adoption of Regulation (EU) 2020/460, the investment priority under Article 5(1)(b) of the ERDF Regulation covers also investments necessary for strengthening the crisis response capacities in health services. This would cover any operation that ensures an effective response to a public health crisis in the context of the COVID-19 outbreak. Support to the healthcare system includes, but is not limited to, investments in financing healthcare equipment and medicines, testing and treatment facilities, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), medical devices, investments for adapting working environment in the health care sector and for ensuring access to health care.



To facilitate the adoption of adequate and quick measures by Member States, the priority of the Commission has been to design a temporary framework allowing different types of support, including through financial instruments, with lighter requirements to give Member States the means to address different types of needs, while ensuring that the EU Internal Market is not fragmented and that the level playing field stays intact. Member States are therefore invited to use the possibilities of the Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak and Article 107(2)(b) TFEU. Notifications of schemes under this Temporary Framework will have a quick and priority treatment, provided Member States use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

<b>BE</b>	The Member State must be able to implement the measures it deems necessary to combat the coronavirus. It is essential for the Commission to clarify the types of measures envisaged, particularly as regards aid to the SMEs which will be mainly affected.
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Vouchers to stimulate demand

Vouchers for customers are **not** eligible for support from ERDF as they do not fall under activities provided for under Article 3(1) ERDF and they would also not be part of working capital of the SMEs, as the cost of such vouchers would not be borne by the SMEs.

This does not preclude direct support for working capital of SMEs, where necessary as a temporary measure to provide an effective response to a public health crisis, in sectors particularly strongly affected, such as the hotel / restaurant / catering/ travel industry. The Commission recommends that alternative approaches and timing of support are considered to ensure that the implemented measures are temporary and indeed timely and effective, and that the selection procedures and criteria ensure transparency and equal access to the support.

<b>RO</b>	<p>We were planning to allocate a share of the amount dedicated to the interventions for the SMEs to <b>the vouchers</b>. The idea behind distributing the vouchers for holidays or for food is that by encouraging the consumption the offer will be stimulated. People will use vouchers to travel inside the country and thought the HORECA industry will develop. The same concept applies for the food vouchers for stimulating the food industry. The companies in both the HORECA and the food industry are mostly small and medium size enterprises.</p> <p>As you are probably aware, the companies in the HORECA and travel industry have been severely hit by the COVID crisis.</p>
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Undertakings in difficulty providing SGEI

Regulation 360/2012 on *de minimis* aid granted to undertakings providing services of general economic interest excludes from its scope undertakings in difficulty.

The amendment of Article 3(3) of ERDF Regulation 1301/03 simply aligns the ERDF rules with the State aid rules applicable in the current crisis period whether the Temporary Framework or those *de minimis* regulations which allow for support to firms in difficulty (Regulation (EU) No 1407/2013 of 18 December 2013 on *de minimis* aid Regulation (EU) No

1408/2013 of 18 December 2013 on de minimis aid in the agriculture sector, Regulation (EU) No 717/2014 of 27 June 2014 on de minimis aid in the fishery and aquaculture sector).

<b>EE</b>	Point (d) of Article 3(3) Regulation (EU) No 1301/2013 (undertakings in difficulty) - why is there no reference to Commission Regulation No 360/2012 on <i>de minimis</i> aid granted to undertakings providing services of general economic interest?
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Undertakings in difficulty - verifications for loans and other forms of financing

In accordance with Article 125(3)(b) CPR, the managing authority should ensure that selected operations, irrespective of the form of support, fall within the scope of the fund or funds concerned and that they are not concerned by any of the exclusions therein, including those laid down in Article 3(3)(d) of the ERDF Regulation and Article 2(2)(e) of the CF Regulation, applicable to undertakings in difficulty.

Pursuant to Article 125(4)(a) CPR the managing authority should verify, where relevant, compliance with State aid rules, including in relation to undertakings in difficulty.

Article 3(3)(d) of the ERDF Regulation provides that "*undertakings in difficulty, as defined under Union State aid rules*" are not eligible for support from ERDF. The exclusion in scope laid down in ERDF Regulation was defined by reference to State aid rules with the objective to ensure consistency and alignment between the two sets of rules and provide greater simplification for the managing authorities.

Therefore, for aid granted under the Temporary Framework the managing authorities will have to take into account the **financial situation of companies on 31 December 2019 based on the GBER definition (Cf. Article 2(18)(1))**. The same logic should apply for aid granted under the *de minimis* rules, where the managing authorities should take account of the financial status of the beneficiary as / only if required by the relevant *de minimis* rules.

On 2 April 2020, the Commission [proposed to amend Regulation \(EU\) No 1303/2013 and Regulation \(EU\) No 1301/2013 as regards specific measures to provide exceptional flexibility for the use of the ESIF in response to the COVID-19 outbreak](#) to provide more legal certainty for this approach. The related amendments to the regulations entered into force on 24 April. The amendment to Article 3(3)(d) of the ERDF Regulation concerns support to undertakings in compliance with the State aid Temporary Framework or Commission Regulations (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 717/2014. It expresses the Commission views that, in these specific circumstances, undertakings in difficulty should not be excluded from the scope of ERDF, if the aid is granted in compliance with the Temporary Framework, the general and the sectoral *de minimis* rules, whichever applicable. Note should be made that Commission Regulations (EU) No 1407/2013, (EU) No 1408/2013 and (EU) No 717/2014 have not been affected by the above legislative amendments and remain therefore fully applicable.

In the light of the above, for ERDF support granted under the specific State aid rules or *de minimis* regulations covered by the proposed amendment to the Article 3(3)(d) of the ERDF Regulation, it would be sufficient to verify compliance with those rules. In particular:

- For grants, guarantees, loans and equity under section 3.1 (as well as some other sections, including 3.2 and 3.3) of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended on 3 April 2020, the

managing authority would ensure that aid is not granted to undertakings that were already in difficulty (within the meaning of the GBER, or other regulations referred to in the footnote above) on 31 December 2019;

- For loans or guarantees granted in line with the Commission Regulations (EU) 1407/2013, (EU) No 1408/2013 or (EU) No 717/2014, the managing authority would ensure that the applicable provisions are complied with. This includes verifications of the compliance of Article 4(3)(a) and Article 4(6)(a) of each of these acts, requiring that the beneficiary is not subject to collective insolvency proceedings nor fulfils the criteria under its domestic law in force at the moment of granting of the aid for being placed in collective insolvency proceedings at the request of its creditors. Note should be made that the domestic law could have been revised in response to the COVID-19 crisis and that could affect the scope of verifications;
- For grants, equity or quasi equity provided in line with the Commission Regulations (EU) No 1407/2013, (EU) No 1408/2013 or (EU) No 717/2014 the financial status as undertaking in difficulty would not need to be subject to verification by the managing authority.

For support granted under State aid rules, not covered by the proposal for amendment of ERDF, the managing authority should ensure the exclusion of undertakings in difficulty even if the support is allowed under those State aid rules.

[\[1\]](#) in Article 2(18) of Regulation (EU) No 651/2014, also referring to the definitions contained in Article 2(14) of Regulation (EU) No 702/2014 and Article 3(5) of Regulation 1388/2014 respectively.

<b>LT</b>	<p>In implementing the measure "<b>Partial interest compensation</b>", the interest paid by business entities is compensated under their available financing contracts. The measure is attributed to global grant instruments. Taking into consideration the COVID-19 situation, expanded list of eligible activities (interest on working capital loans will be financed additionally) and additional allocations to master the crisis, the number of applications received significantly increases. In assessing such applications, <b>is it mandatory to ascertain the eligibility of loans in accordance with Article 2(2) of Regulation 1300/2013 and Article 3(3) of Regulation 1301/2013</b> (what significantly increases the administrative burden of the assessment of applications)? <b>Can all businesses be supported in order to prevent an economic downturn?</b></p>
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Undertakings in difficulty outside of COVID context (amended Article 3(3)(d) ERDF)

The amended Article 3(3)(d) of the ERDF Regulation does not restrict the ERDF support granted under the *de minimis* regime to projects related to the COVID-19 outbreak. Provided that all conditions of Commission Regulation (EU) 1407/2013, Commission Regulation (EU) 1408/2013 or Commission Regulation (EU) 717/2014 are respectively met, undertakings in difficulty may therefore be eligible to ERDF support, whether or not the project is related to the COVID-19 outbreak.

<b>SK</b>	Will it be possible to grant support from ERDF under the <i>de minimis</i> rules to
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undertakings in difficulty for any projects or only for projects related to COVID-19 outbreak?
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#### Equity support to large enterprises

Firstly, we refer to our reply to the previous question on 'Financial instrument support to large enterprises, including mid-caps', where we concluded that ESIF financial instruments could support enterprises subject to two basic eligibility criteria: the types of enterprises and targeted activities. Article 37(4) CPR does not exclude non-SMEs (notably mid-caps and large enterprises) and sets out the scope of the final recipients' targeted activities that could receive support.

Further, we also confirm that your understanding is correct that as far as non-SMEs are concerned, there may be certain limitations on the possibility of using ESI Funds to provide support, stemming from [Fund-specific rules](#) and from [the applicable State aid rules](#)<sup>[1]</sup>. In addition, the relevant programme and priority axis may not allow ERDF contributions to support non-SMEs.

Both the [Regulation \(EU\) 2020/460](#) (CRII) and [Regulation \(EU\) 2020/558](#) (CRII Plus) do not introduce any new restriction as to the eligibility of expenditure in (equity, debt or other) financial instruments supporting non-SMEs.<sup>[2]</sup>

In the context of thematic objective 1 (TO1), the current legal framework, notably established in Articles 3(1)(b) and 5(1) ERDF Regulation and Article 9(1) CPR, remain valid.<sup>[3]</sup> We do though recall that the scope of TO1 was extended by CRII Regulation to allow ERDF support to any operation "fostering investment necessary for strengthening the crisis response capacities in [health services](#)". See reply on 'Scope of support under ERDF Article 5(1)(b) ERDF Regulation' for details.

Finally, as for providing guidance as to what kind of support is eligible taking into account regulation specific restrictions, you may find practical examples of how ERDF has financed mid-cap companies through financial instruments, considering the restrictions set by the ERDF, and in compliance with usual State aid rules in the following – among others - examples:

1) [The CAP Troisième Révolution Industrielle \(CAP TRI\) financial instrument](#), which was supported by the 2014-2020 ERDF OP in the region of Nord-Pas de Calais in France, was developed to help the region become the first carbon-neutral region in France by 2050. CAP TRI's overall objective was to provide equity and quasi-equity, primarily for SMEs but also for **mid-caps** and special purpose vehicles.

2) [The 'MIUR' financial instrument](#) provided ERDF resources (EUR 270 million) from the EU funded National OP (2014-2020) for **TO1** Research and Innovation in Italy and managed by the Ministry for Education, University and Research (MIUR). The investment strategy focused on Key Enabling Technologies/KETs and SSI of the private and the public sector in the eight regions of the South of Italy (Cohesion Regions). The eligible final recipients included **medium and large** size companies.

[1] It could be noted though that in the current crisis period, the Temporary Framework rules adopted on 19 March 2020, and amended on 3 April 2020 allows State aid to all types of firms in need of working capital, or to fund COVID-19 related research or production projects, whether by direct grants or through debt related financial instruments.

[2] The CRII Regulation introduces **a new sub-paragraph in Article 3(1) ERDF** which allows MS to provide **working capital support to SMEs (through grants or repayable assistance)** where necessary as a temporary measure to provide an effective response to a public health crisis and a new sub-paragraph in Article 37(4) CPR, which clarifies that *"financial instruments may also provide support in the form of working capital to SMEs if necessary as a temporary measure to provide an effective response to a public health crisis."*

The CRII Plus Regulation introduced new Article 25a CPR on the basis of which MS providing **working capital support to SMEs through FIs** (in line with Article 37(4) CPR) would not require from final recipients new/updated business plans or evidence that the support was used for its intended purpose.

[3] ERDF support under thematic objective 1 (TO1) could be provided to non-SMEs, including large and mid-cap companies via equity or similar (quasi equity, venture, etc.) financial products in line with the first sub-paragraph of Article 37(4). Such support could contribute to the achievement of either/both investment priorities according sub-points (a) and (b) of Article 5(1) ERDF Regulation in line with smart specialisation strategies. All applicable Commission's guidance on the recommended scope of such support remains valid, but such guidance does not exclude other scope of support, which fits under TO1, from being also supported, when justified and in line with the smart specialisation strategies.

**LV** In line with **Article 37(4) CPR, all types of enterprises are potentially eligible for working capital support through financial instruments.**

But if we look **at ERDF Regulation Article 3**, the ERDF shall support the following activities in order to contribute to the investment priorities set out **in Article 5**:

- (a) productive investment which contributes to creating and safeguarding sustainable jobs, through direct aid for investment **in SMEs**;
- (b) **productive investment, irrespective of the size of the enterprise concerned**, which **contributes** to the investment priorities set out in **points (1) and (4) of Article 5**, and, where that investment involves **cooperation between large enterprises and SMEs, in point (2) of Article 5**.

As we have identified the need to finance operations for the **mid-caps in the form of equity** type products (equity investment, quasi-equity investment, venture debt etc.), we guess support for **large enterprises** through **financial instruments** is **possible** within priority **"Strengthening research, technological development and innovation"**.

In 2015 European Commission gave an explanation that **under the TO1 the ERDF**

**support is envisaged for the development of endogenous potential in research and innovation** i.e. projects consisting of operations pertinent to Technology Readiness Level (TRL) stages 2-8 (inclusive). Investments into large enterprises under TO 1 need to focus on a clear R&D effort associated with high risk/low profitability (since the investments should relate to early stages of the value chain) or into projects of a unique character that cannot be otherwise delivered via SMEs. Investments into large enterprises should not be a mere substitution of corporate investments into RDI activities but bring evident added value for the local research and SME communities.

As we understand correctly, before mentioned restrictions are still applicable. If so, could you give us a guidance what kind of support is eligible taking into account regulation specific restrictions.

Supporting staff costs under TO1(b) ERDF

As a general rule, where staff costs **are part of an operation** falling within the scope of the ERDF, as defined in Article 3(1) ERDF Regulation, and contributing to one of the investment priorities, as set out in Article 5 ERDF Regulation, and thematic objectives, these staff costs could be eligible under the ERDF, if provided so in the national eligibility rules, in accordance with Article 65(1) CPR. The operation concerned cannot comprise only of staff costs and it has to be in line with the overall intervention logic of a given programme and with the investment logic of the specific priority axis. For example in case of Article 5 (3) (b) ERDF Regulation "developing and implementing new business models for SMEs, in particular with regard to internationalisation", it may be possible to support the wage costs of a newly hired expert for internationalisation, who develops a new business model for an SME.

The same approach applies to the extended investment priority under TO1 in line with Article 5(1) of the ERDF Regulation as amended by [the Regulation \(EU\) 2020/460](#). The explanatory memorandum and recital (4) of that Regulation provide that "the ERDF investment priority to strengthen research, technological development and innovation should cover investment in products and services necessary for fostering crisis response capacities in public health services". These investments could also cover staff costs that are necessary in response to the COVID-19 outbreak, as long as they form a part of an operation that falls within the ERDF scope of support as defined in Article 3(1) ERDF Regulation. The final assessment will depend on the concrete design of the operation.

Such support can, however, be supported by the ESF as set out in the replies under the ESF section of the CRII website. Moreover, following the adoption of [the Regulation \(EU\) 2020/558](#) under the CRII Plus package, Member States have full flexibility for transferring the 2020 resources for the Investment for Growth and Jobs goal between the ESF, the ERDF and the Cohesion Fund in order to respond to the COVID-19 outbreak (see Article 25a(2) CPR).

**ES** Regulation (EU) No 1301/2013 has been amended in Article 5(1)(b) to include "promoting investment to strengthen the capabilities for responding to public health crises" as an objective to be financed by the ERDF. In this respect, clarification is

	requested as to whether staff costs derived from the hiring of additional means to attend to the needs derived from the COVID 19 outbreak (medical staff, deployment of law enforcement personnel, etc.) can be financed?
<b>CY</b>	Can ERDF co-finance investments related to (a) recruitment of additional medical staff to hospitals and other treatment facilities?

Hospitals which are undertakings in difficulty

In accordance with Article 3(3)(d) of the ERDF Regulation, as last amended by the [CRII+ Regulation](#), ERDF does not support undertakings in difficulty as defined in the Union State aid rules. This exclusion does not apply to undertakings receiving support complying with the Temporary Framework for State aid measures or any of the *de minimis* rules with the exceptions of those *de minimis* rules, applicable to the services of general economic interest.

The amended provision was defined in reference to State aid rules with the objective to ensure consistency and alignment between the two set of rules and provide greater simplification for the managing authorities. This principle has the following implications in the context of hospitals.

First, the State aid rules only apply where the beneficiary of a measure is an 'undertaking'. In line with the well-established case law, undertakings are entities engaged in an economic activity, regardless of their legal status and their financing. The classification of an entity as an undertaking is always relative to a specific activity. An entity that carries out both economic and non-economic activities is to be regarded as an undertaking only with regard to the economic activities. Following the same reasoning, the exclusion laid down in the ERDF Regulation, applies only to the extent that the beneficiary is an undertaking. Therefore, if the co-financed activity is not of economic nature, the exclusion of ERDF does not apply. Consequently, **when ERDF is granted to a hospital in support of non-economic activities, the financial status of the hospital does not need to be verified.**

Although the health care systems differ significantly across the Union, the [Commission Notice of 2016 on the notion of State aid](#) (NoA) has summarised the common principles that govern the categorisation of the health care activities under Article 107(1) TFEU (see points 6-16 and 23-27 of the NoA). Medical activities carried out in the state of emergency aimed to control the pandemic and stem the spread of the COVID-19 outbreak, connected with the exercise of public powers and implying a high degree of involvement of the public authorities are in principle of non-economic nature.

<b>SK</b>	Some hospitals dedicated as focal points for COVID-19 treatment fall under the conditions of enterprise in difficulties. We need an exception for these hospitals as they are designed for carrying out activities under the state of emergency. How can we achieve exceptions for them?
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## **Working capital**

Scope of working capital, requirement for business plans

The term 'working capital' used in the proposed new sub-paragraph of Article 3(1) ERDF Regulation and of Article 37(4) CPR could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)). This includes crisis-related costs such as **cleaning of spaces, protective measures and adaptation of workplaces**. Equipment, which is necessary to provide an effective response to a public health crisis and is expected to be mostly depreciated over the period of the health crisis and its aftermath, could also be included in the categories of expenditure for which the working capital could be used.

Support in the form of grants or repayable assistance to cover the costs of working capital, in line with the proposed new sub-paragraph of Article 3(1) of ERDF Regulation, is eligible if the company is an SME, and if such support is necessary as a temporary measure to provide an effective response to a public health crisis and if such support is covered by the priority axis. For the support in the form of financial instruments, working capital has already been eligible and continues to be so, also outside of the specific conditions introduced by the proposed provisions of Article 3(1) ERDF Regulation.

Please note that you can support project which combine different categories of expenditure, including those falling under working capital (for example, protective disposable equipment, cleaning of spaces etc.) and those which are investment expenditure (for example, equipment for employees, etc. depreciated over a longer term and needed for the business continuity). Equipment or other investment expenditure **could already be eligible under Article 3 ERDF Regulation**, e.g. as productive investment in SMEs or investment in business infrastructure (Article 3(d) ERDF Regulation). Hence, there is no need to create any precise demarcation line between what constitutes working capital, and what not, if the latter is also eligible.

Member States can set up compensation schemes for COVID-19 related damages. Such schemes, upon notification to the Commission, can be approved as compatible with the internal market on the basis of Article 107(2)(b) TFEU if the granting authorities establish the link between the COVID-19 outbreak and its consequences and the scheme. There is no obligation to have a business plan. Member States may usefully go to DG COMP's website to find a template of the information needed in a notification: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html).

To facilitate a quick and priority treatment of such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu) .

The requirements in the context of working capital under the proposed new sub-paragraphs of Article 3(1) ERDF Regulation (for all forms of finance) and Article 37(4) CPR (for financial instruments) indeed should be fit for purpose and simple.

#### ***(i) Business plans***

There is no requirement for a business plan for grants and repayable assistance. It is also not required under the [Temporary framework for State aid](#) .



For financial instruments, under the current regulatory framework (Article 9(2)(e)(vii) [CDR 480/2014](#)) there is a need for some document from a final recipient which can be considered as a business plan which is part of application for support.

The EU level rules do not define the contents of such a document and in the context of working capital could be very general e.g. summary information on current working capital expenditure and on planned actions of the applicant which could affect the working capital needs (e.g. if they plan to reduce the number of staff, or reduce salaries, this would affect the working capital needs).

There is no need to call such a document / information a 'business plan' and it can be incorporated into the application used by the body granting the aid. At the same time, such minimum information is needed to ensure that funds (and the right amount of them) are channelled to SMEs which indeed need them as the result to the public health crisis.

Given the uncertainty about the future developments and constantly changing situation, avoiding too detailed description of cost categories in the document setting up conditions of support (even if more information was provided in the application or the business plan) and envisaging from the very beginning flexible, but transparent procedures for adjusting the document would be recommended, so that the support could best fit the evolving needs of the SMEs.

#### ***(ii) Ex ante assessment***

For **new** financial instruments to be set up now and to provide working capital as a temporary measure to provide an effective response to a public health crisis, the managing authority would need to comply with the CPR provisions relating to the set-up of a financial instrument, including the need to conduct an ex-ante assessment.

However, such requirement should not delay deployment. An ex-ante assessment should be very focused and brief (by referring to the national and EU documents already being published in a broader context, which already provide key elements to justify market failure and the current COVID-19 crisis); and would not need to be outsourced (a competent public body/fund manager could do it). The same approach should be followed for the drafting of an investment strategy, business plan and funding agreement.

For **existing** financial instruments, requirements depend on the current scope of the financial instrument to be deployed for providing working capital to SMEs. If working capital is already covered by the scope of the financial instrument, there may be no need for changes in the ex-ante assessment. However, if it is outside the current scope, the ex-ante assessment may need to be updated in line with Article 37(2)(g) CPR.

In either case, a **new or an updated** ex ante assessment should be short and focused on addressing the urgent needs related to the crisis and it can be prepared without outsourcing by a public body or by a fund manager. Funding agreements/investment strategies may also need to be adjusted to allow a potential re-focus of the existing FI to address the investments needed to respond to the crisis.

*For more, see sections 3 and 4 of the reply 'Ex ante assessment and need for programme amendments when working capital is added\_' with specific advice on practical steps to be taken.*

### **(iii) Reporting**

EU-level reporting requirements for financial instruments relate to key financial information which financial intermediaries would collect anyway and should not have impact on final recipient beyond what is already normal market practice.

<b>IT</b>	Support to business sector: the proposed Article 3(1) of ERDF Regulation allows for the financing of working capital also via grants. The Italian side to include also the extraordinary (health crisis related) costs such as cleaning of spaces, protective measures and equipment for employees, adaptation of workplaces etc.
<b>IT</b>	Given the coronavirus, many SMEs will record significant net losses, at least in 2020. At present, various managing authorities of Northern Italy raised the issue of compensation, in application of Article 107(2)(b) of the Treaty. Under this scenario, the grant would be provided as compensation, with no obligation to show any business plan;
<b>IT</b>	As for the support of working capital with financial instruments (already possible), it is asked to allow for softened conditions, i.e. without a business plan related to an expansion, without a new ex ante assessment and with easier reporting procedures.
<b>SI</b>	European Structural and Investment Funds are to be covering also working capital according to CPR modification. It is necessary and also adequate to the situation, if working capital would be as much opened, managing to cover all business related needs.

Can grants or repayable assistance be used for working capital?

**ERDF grants and repayable assistance could be used for working capital** in SMEs where necessary as a temporary measure to provide an effective response to the public health crisis. Such a possibility is introduced by the proposed new subparagraph in Article 3(1) of ERDF Regulation.

In addition, all ESI Funds can provide such support in the form of financial instruments in line with the proposed Article 37(4) CPR. For EAFRD working capital remains eligible only in relation to investments supported by the rural development programmes, in accordance with Article 45(5) of Regulation 1305/2013.

<b>EE</b>	Does working capital refer only to financial instruments or also non-refundable grants?
<b>EE</b>	Can working capital loans be provided only as financial instrument or also grants?
<b>DE</b>	Does the financing of working capital include both financial instruments and grants?
<b>PL</b>	To alleviate the consequences of the coronavirus crisis, the proposed changes to the legal framework allow for supporting SMEs working capital with grants. Is our understanding correct that loans are equally accepted to that end?
<b>RO</b>	We are planning to allocate a share of the amount dedicated to the interventions for

the SMEs (...) for the working capital for the SMEs for restarting their business. Just let us know if there is any possibility to move forward with our initiatives on SMEs interventions.

#### Time limits on working capital transactions

No, there are no time-related limits. The CPR does not define any specific time limit in relation to working capital. What constitutes working capital should be therefore defined by national eligibility rules, and given dynamic nature of the current situation could be revised in line with future developments. In those Member States or regions which already use financial instruments supporting working capital, consistency would be useful to avoid artificial gaps between the already available working capital support and its extension to short-term support in this specific context (unless the public health crisis justifies an inconsistent approach). The Commission's guidance recommended a benchmark of 2 years maturity, but given the fact that there is no specific parameter defined in the CPR, other justified arrangements were not excluded – see reply no. 7 in the [QA document](#) for the guidance note on working capital. The same benchmark, or the common 1-year assumption used in accounting, could be used also for other forms of support.

In addition, the proposed sub-paragraph of Article 37(4)CPR does not apply only to the EIB. It applies generally.

**EE** Are there any time limits on working capital transactions (e.g.: up to 12 months - does it apply only to the EIB or does it apply generally)?

What is meant by 'temporary measure'?

The proposed provisions of Article 37(4) CPR and Article 3(1) ERDF Regulation do not define what the temporary measure is so this could be defined in national eligibility rules or introduced through contractual arrangements. Given still very high uncertainty about future developments of the crisis, the arrangements should be done at present in such a way as to make it possible to adjust them when needed. It is not impossible that such temporary arrangements could be justified even until the end of this programming period, but it is not possible to determine at this moment.

**EE** What is a temporary instrument (does the duration extend also transactions)?

**EE** Access to working capital is proposed as a "temporary measure". It is difficult to predict how long the need for such products will last and how long "temporary" will be. Is it fully up to the Member State to determine when to wind up the instruments? Is the intention to keep this possibility until the end of the programming period i.e. theoretically until 2023?

Does working capital include cost of wages and rent?

Support in the form of grants to cover the costs of wages and rent **could be supported as part of working capital**, in line with the proposed Article 3(1) of ERDF Regulation, if the employer is an SME, and if such support is necessary as a temporary measure to provide an effective response to a public health crisis and if such support is covered by the priority axis.

Working capital could be understood broadly, as the difference between current assets and current liabilities of an enterprise. The level of need for working capital varies with the macroeconomic situation and is strongly affected by the crisis. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including **labour** ; inventories and overheads; **rent** , utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)). This could also include obligations towards national or regional authorities, healthcare and social security systems, overdue payments to suppliers and service providers.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this must be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. Neither working capital nor the specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects.

In case the programme needs to be amended to extend eligibility to cover the new scope, expenditure for operations fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to a public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.

In order to facilitate access for recipients of such support, the Member State may decide that the beneficiary is the body granting the aid in line with Article 2(10)(a). Furthermore, the support based on simplified costs options, e.g. lump sums, as provided by Article 67(1)(c), could be used, which should minimise the burden for the SMEs receiving support. Support in the form of a lump sum is also possible under the [Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#).

HU	CCHOP Priority 1, SMEs, I would like to ask for your feedback- in line with the ongoing amendments to the ERDF and CPR Regulations- on whether you would consider acceptable a simplified SME call for SME support up to a minimum grant amount to finance wage costs and rent. Wage costs are strongly ESF-type, so we consider our proposal debateable, but it would be unreasonable to burden the call and consume its resources with additional ERDF-type mandatory activities (such as asset procurement) as currently there would be no need to meet asset procurement needs?
PL	As far as the support for SMEs, especially micro and small companies, affected by the effects of a pandemic we think about shielding measures just to help them to avoid bankruptcy or dismiss of their workers – temporary financing of salary and wages or financing the working capital to some limit would this be possible under TO3?

What is covered by working capital and can assets be supported as well?

Liquidity in this context is synonymous with the term working capital and it could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other

manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: [EGESIF 14 0041-1](#)).

Equipment purchase, which is expected to be mostly depreciated over the period of the current crisis and its aftermath, could also be financed by the amount provided as working capital under the proposed Article 3(1) ERDF, or included as eligible expenditure under existing provisions e.g. under Article 3(1)(e) ERDF.

Please note that you can support project which combine different categories of expenditure, including those falling under working capital (for example, protective disposable equipment, cleaning of spaces etc.) and those which are investment expenditure (for example, equipment for employees, etc. depreciated over a longer term and needed for the business continuity). Equipment or other investment expenditure **could already be eligible under Article 3 ERDF Regulation**, e.g. as productive investment in SMEs (Article 3(1)(a)) or investment in business infrastructure (Article 3(1)(d)). Hence, there is no need to create any precise demarcation line between what constitutes working capital, and what not, if the latter is also eligible.

**DE** Does the proposed amendment to Article 3(1) ERDF Regulation concern liquidity support to SMEs or assets (in German "Liquiditätshilfen für Unternehmen oder Betriebsmittel")? I.e. what exactly is meant with support for financing of working capital in SMEs.

**DE** Article 1(1) of the "Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1303/2013, Regulation (EU) No 1301/2013 and Regulation (EU) No 508/2014 as regards specific measures to mobilise investments in the health care systems of the Member States and in other sectors of their economies in response to the COVID-19 outbreak" reads: „In addition, the ERDF may support the financing of working capital in SMEs where necessary as a temporary measure to provide an effective response to a public health crisis.“ Does this concern liquidity support to SMEs or assets?

Support from ERDF for ESF-type of measures, short-time work schemes (UPDATED)

*(This reply has been updated 9 April 2020 to include a reference to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak. The added paragraph is in blue)*

The scheme described in the questions concerns a short-time work scheme, which is eligible for support by the ESF (see: reply to the question on short-time work). Such a scheme allows firms experiencing economic difficulties to temporarily reduce the working hours of their employees. The employees in turn receive income support from the State for the hours not worked. The employees are therefore the ones who are supported in a short-time work scheme.

A short-time work scheme is different from the support which can be provided by the ERDF to SMEs. In line with the additional paragraph in the amended Article 3(1) of ERDF Regulation, the ERDF may support financing, also in the form of grants and repayable assistance, of working capital. Working capital could be understood broadly, as the difference between current assets and current liabilities of an enterprise. Categories of expenditure for which the working capital could be used may include, amongst others, the

funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables (see: (see: [EGESIF 14 0041-1](#)).

The labour-related costs forming a part of working capital eligible under the amended Article 3(1) of ERDF Regulation do not exclude costs of wages or wage-related charges. However:

- those costs would have to be borne by the employer receiving such a support. It is our understanding from the description of the proposed scheme, that 40% of the salary is to be paid by employer, while 60% is to be paid by public employment services. If this is the case, only those 40% paid by the employer is covered by working capital. ESF support for payments provided to the employee by the employment services would not be part of working capital of the supported company and would not be eligible for ERDF support (but it is eligible for ESF support as mentioned above).
- in addition, under the amended Article 3(1) ERDF Regulation the support in the form of grants or repayable assistance is eligible only if the supported enterprises are SMEs. This excludes other enterprises, but also employers which are not enterprises, e.g. universities.

As a general rule, where ESF measures already exist or are planned, the Commission recommends taking opportunity of the transfer between the funds. This should make implementation faster and make support easier for recipients of such support and better coordinated thanks to already existing capacities of ESF authorities.

This recommendation is without prejudice to the possibility to use ERDF to finance working capital of SMEs under different arrangements, either through schemes covering all working capital needs (including labour costs), or those focused on the labour component of such costs.

When assessing which Fund can provide support, it is therefore important to make a clear distinction as to whom will ultimately receive the support: the employees or the firm. Short-time work schemes support the employees, while working capital under the amended Article 3(1) ERDF Regulation supports the SME.

On 3 April 2020 the Commission amended the [Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak](#). It comprises a section on short-time work schemes (see section 3.10 on 'aid in form of wage subsidies for employees to avoid lay-offs during the COVID-19 outbreak').

<b>LT</b>	Is there a possibility to finance ESF types of measures from the ERDF, e.g. wage subsidies for the downtime during an emergency to protect employees from unemployment and help to retain jobs?
<b>LT</b>	Employers are obliged to pay a certain amount (app. 40 percent) of the average wage for the employee, who is in a downtime situation. Employers will apply to Public Employment Service (PES) for a subsidy per employee in this situation. The subsidy will cover 60 percent of the wage that is paid under this situation (or 90 percent in the sectors which are highly affected by the crisis), but not higher than the minimum wage. The advance payment will go to the employer who will pay the total wage and

	<p>report to the PES. The support is limited to 3 months per employee, but not longer than the extreme situation continues.</p> <p>Is such expenditures eligible form the ERDF?</p>
<b>LT</b>	<p>Are the costs for project staff eligible when they are paid for downtime (during a national quarantine; quarantine came into effect in Lithuania since March 16th) - i.e. at a time when project staff are temporarily unable to carry out project activities due to national constraints (national legislation requires the employer to pay average wages). Situation 3: The project activities include mobile doctors teams that go to patients' homes to provide dental services to patients with severe disabilities. Since 16 March , a quarantine order has been introduced in Lithuania, during which the provision of dental services is suspended. According to Labor code, if the employer is unable to provide the contracted work for an employee for objective reasons not attributable to the employee, provision should be made for downtime for which the employee is paid average wages. Please explain whether this average salary is an eligible cost.</p>

Is working capital support limited to specific sectors/thematic objectives?

In line with the amended Article 3(1) of the ERDF Regulation, the support for working capital (which provides much needed liquidity in the Covid-19 context) in SMEs is not limited to any sector when it is necessary to provide an effective response to the public health crisis.

This does not preclude Member States from using measures targeting specific sector, which are particularly strongly affected by the crisis. The managing authorities could also use sector-specific criteria to simplify access to the funds, e.g. not requiring detailed justification of the needs from each applicant in the sectors where the effects of the coronavirus crisis are horizontal and well established at macro level, while only in sectors less affected by the crisis (like IT) requiring more detailed justification.

The support for SMEs is primarily delivered under TO3, but the proposed Article 3(1) of the ERDF Regulation applies horizontally, and it is not precluded that support for the working capital is granted under the other thematic objectives when SMEs are supported there, e.g. TO1, TO4, TO8, TO9.

See the other replies concerning working capital to learn about categories of expenditure it could cover, complementarities with the ESF support, different forms of support for working capital (grants, repayable assistance and financial instruments) and steps needed to adjust OPs when needed to make such support possible.

**DE** Is this support limited to certain sectors or could all SME be supported that need liquidity due to the COVID-19 crises?

Is support for working capital linked only to the amounts under the amended Article 139(7) CPR?

No, the amended Article 3(1) of ERDF Regulation is not limited to the amounts not recovered under amended Article 139(7) CPR. Support for working capital under the new provision in ERDF Regulation, indeed should be considered as contributing towards

acceleration of investments related to the response to the COVID-19 outbreak, but such support could also be financed from other ERDF resources still available. In line with the amended Article 139(7) CPR, other measures, outside of working capital under the proposed Article 3(1) ERDF Regulation, or, in the case of financial instruments, Article 37(4) CPR, could be also covered.

**DE** Is it correct that this form of support is not limited to projects financed by amounts not recovered according to the new Article 139(7) CPR?

**DE** Can the ERDF also support the new crisis-related initiatives (Article 3(1) and Article 5(1)(b) ERDF and Article 37(4) CPR) using existing (allocated) programme funding outside financial instruments that are not related to unspent pre-financing respectively not related to unrecovered amounts?

Verification that working capital is linked to crisis

For the support in the form of grants and repayable assistance, working capital may be supported in line with the amended Article 3(1) ERDF only “*where necessary [...] to provide an effective response to a public health crisis*”. Not all SMEs are negatively affected by the crisis, and some e.g. in the IT sector, might have even benefitted from the increased demand for their services or products, and therefore normally would not need public support. It would be also difficult to justify such unnecessary public support as being in line with the objectives of the programme. Thus, the Member States must not presume that there is a “general right” to support in the form of working capital and they need to draw up and apply procedures which should ensure that the selected operation is in line with the requirements of the ERDF Regulation.

For the support in the form of financial instruments, working capital has been eligible already from the beginning of the 2014-2020 period. Hence, when the proposed measures support both working capital needed to provide such effective response to the public health crisis and other eligible working capital, there might be no need to include any specific checks concerning the crisis. When the financial instruments are already in place, there might be even no need to change the underlying funding agreements.

Under EAFRD stand-alone working capital became eligible only in relation to the COVID crisis, therefore the link to the crisis needs to be verified (there is no “general sectoral eligibility”).

Key elements related to management and control of operations supported by ERDF, which include working capital, both during the selection and implementation, are summarised below.

## 1. **Selection of investments / setting out the conditions for support**

As with any other operations, when selecting operations that would receive ERDF support for working capital, the managing authority should comply with the provisions of Article 125(3) CPR concerning the selection of operations. The selection procedures and criteria should be appropriate for the objective of the support, which in the context of working capital is support for liquidity of the affected SMEs, and the Member States should try to avoid unnecessary burden for the applicants. They should be decided at national level, taking into account specific circumstances in a given Member State or region. They could



be based for example on simple financial thresholds, such as drop in sales above a certain percent, or could be differentiated based on a sector, where, for SMEs in a certain sectors, the need for such support is established at the programme/measure level without any additional requirements from applicants. The Commission would be ready to provide advice in the programme-specific context of assessment by the monitoring committee which should examine and approve the methodology and criteria used for selection of operations in line with Fund-specific rules.

Article 125(3)(c) CPR requires that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning in particular the products or services to be delivered under the operation, the financing plan, the time limit for execution.

When deciding on the templates of such documents and specific requirements for a particular SME under measures intended to provide response to the public health crisis, the Member States should carefully assess if any additional requirements imposed do not undermine efficiency of the measures. In particular, the following approaches are recommended in the context of working capital:

#### **Avoiding unnecessary restrictions on the scope of working capital:**

- working capital is the difference between current assets and current liabilities, and can be used to fund many categories of expenditure (see replies on specific questions concerning ERDF and working capital for more specific explanation); the relative importance of each of the categories within the overall capital requirements may vary over time, especially in the current economic environment;
- general support, allowing for shifts within categories of working capital, would be normally considered more effective in addressing liquidity issues;
- even if more detailed information is requested or provided by applicants in the applications for support, the managing authorities have no obligation to include all the details in the document setting out the conditions of support.

#### **Flexibility to adjust the timeline:**

- as the economic situation is unstable and at this stage it is difficult to estimate how long the support might be needed in a given Member State, a sector or for a specific SME supported, it would be a good practice to include review clauses or provide for other arrangements so that future developments could be accommodated;
- where the support is provided under specific State aid rules linked to the coronavirus crisis, in particular the Temporary Framework, conditions included there should as a general rule be sufficient.

#### **Management verifications and audits**

For financial instruments, the Commission proposed on 2 April 2020 that it would no longer be required that final recipients submit a new or updated business plans or equivalent documents and evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as part of the supporting documents. This derogation would apply where financial instruments provide support in the form of working capital to SMEs pursuant to the second subparagraph of Article 37(4), i.e. only to COVID-related support from the moment the derogation enters into force.

For the working capital not covered by the derogation, following the principles described in point 1 should help Member States to minimise the burden.

For grants and repayable assistance:

- Simplified costs options could be used; under *de minimis*, the use of simplified costs options will be required in accordance with Article 67(2a) CPR when the public support does not exceed EUR 100 000 and no use was made of the transitional provision set out in Article 152(7) CPR;
- If financing is based on real costs, documents demonstrating that the amount granted has been incurred in relation to working capital needs to be provided. It is recommended, however, that the document setting out the conditions of support allows for a broad category of costs to be declared giving the recipients of such support the flexibility to choose those items of expenditure which are easier to be demonstrated (see recommendations on documents setting out conditions of support above).

For financial instruments, verification of financial statements for a company at the moment of investment selection for funding should usually be sufficient, without any need to provide specific proof of expenditure incurred. The loan is given based on an analysis of the balance sheet and the foreseen evolution of short term financing needs. Requesting invoices to justify the use of the working capital financing would not be normal banking practice.

The management verifications should check if the selection is in line with the applicable EU and national rules. In the context of working capital, they should focus on:

- whether the company indeed had been affected by the public health crisis, as defined in national rules, when a given measure targets exclusively such expenditure in line with the amended Article 3(1) of the ERDF Regulation; (as described above, this might not be needed for financial instruments which support working capital also outside of the coronavirus crisis); and
- ensuring that no double financing is provided in case the SMEs are or have been supported also by other operations.

<p><b>HU</b></p>	<p>Based on the amendment of Regulation (EU) No 1303/2013, and Regulation (EU) No 1301/2013, Member States will have the opportunity to support the financing of working capital in SMEs where necessary, as a temporary measure to provide an effective response to the public health crisis. The question arises, in what way should the Member State prove that these measures have been adopted in response to crisis, or are relevant to the crisis. Or can we presume that this general right of access to working capital is for each SME, given that means working capital can be provided to each SME, naturally observing ERDF, and OP compatibility.</p>
<p><b>HU</b></p>	<p>Can we provide separate working capital loan scheme under EDIOP Priority 8 - based on the amendment of Regulation (EU) No 1303/2013 - without demonstrating that the working capital loan is linked to an investment / related to the crisis. Or can we presume, that this general right of access to working capital for each SME is given, that means working capital can be provided to each SME, naturally observing ERDF, and OP compatibility.</p>

## Definition of working capital, operating costs

The proposed definition of the working capital has been in place since 2014 and is already used for support in the form of financial instruments, see: [EGESIF 14 0041-1](#). The same definition is proposed to be used for the support in the form of grants and repayable assistance introduced in response to the public health crisis.

Member States may provide, in the national eligibility rules, for a more detailed definition operationalised to fit the specific programme context and such a national approach could be reflected in the description of the relevant priority axis which is approved by the Commission.

Working capital is understood to be the difference between the current assets and current liabilities of an enterprise. This difference measures the organisation's operational liquidity (in other words, its ability to pay its debts as they fall due). Operating costs merely represent expenses incurred by an organisation in its day-to-day activities. 'Working capital' and 'operating costs' are therefore entirely separate concepts, and the terms should not be used interchangeably.

**CZ** We would appreciate a formal (binding) confirmation made by the Commission that "working capital" in this case really means operating costs. This might have the form of a statement issued by the end of the negotiation process.

## Non-performing recipients under grant schemes

We understand that the proposed scheme offers grant support for working capital in SMEs (as introduced by amended Article 3(1) of the ERDF Regulation) in which the grant amount has to be repaid if certain additional conditions either related to the intended use of the working capital (e.g. to cover labour costs) or some other policy considerations (e.g. maintaining jobs) are not met and the conditions are to be verified later.

In line with Article 67(6) CPR, the document setting out the conditions for support for each operation should set out the method to be applied for determining the costs of the operation and the conditions for payment of the grant. In Article 125(3)(c) CPR it is specified that the managing authority should include specific requirements concerning the products or services to be delivered under the operation. Finally, in line with Article 125(4)(a) CPR verifications by managing authority should include, among others, also the conditions for support of the operation as set out in the document. Hence, as a general rule any expenditure which does not meet the conditions, would not be eligible and, if already included in the payment applications, would have to be deducted, reducing the amount of eligible expenditure.

**PL** Taking into account specific aspects of working capital and difficulty to make any collateral on working capital as well as the actual conditions of COVID-19 crisis which in worse scenario may lead to closure or suspension of certain economic activities for longer period of time it is necessary in our view to allow for certain level of losses also in grant schemes which aim is to mitigate possible negative economic consequences of COVID-19.

We plan to set within the grant instrument for working capital for SMEs the level of losses at 25%. We hope it is acceptable for the European Commission to incorporate the level of possible losses in grant schemes for SMEs similar as it is within financial instruments (in case of FIs the acceptable level of losses is up to 25%).

Could you please confirm that it is possible?

#### Working capital for NGOs

The amended Article 3(1) of the ERDF Regulation targets economic operators. The level of need for working capital varies with the macro economic situation and the SMEs in many sectors have been particularly strongly directly affected by the current crisis.

If an NGO is engaged in economic activities, it could be considered an SME, as according to Article 1 of Annex I to [Commission Recommendation 2003/361/EC](#) an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. NGOs engaged in economic activities could potentially benefit from ERDF support to their working capital if this is necessary as an effective response to the public health crisis.

While support for working capital is restricted to entities engaged in economic activities, NGOs may potentially benefit from other support from ESI Funds. In particular, NGOs engaged in health services may potentially benefit from ERDF support when implementing projects necessary for fostering the crisis response capacities under the amended Article 5(1)(b) of the ERDF Regulation provided these projects fall within the scope of the ERDF as set out in Article 3(1) ERDF Regulation. They can also receive support [from ESF](#) in particular for short-time work schemes and support to employers and workers for setting up telework arrangements (see also the general Q&A on the support that can be provided by cohesion policy to address the COVID-19 outbreak).

In addition, NGOs acting as partners involved in implementation of programmes may also continue to receive technical assistance from the ESI Funds in line with Articles 59(1) and 5(3)(e) CPR.

**SK** It is not clear to us why the added possibility of reimbursement of the operating capital in the draft amendment to the ERDF Regulation only applies to SMEs and not also to NGOs.

#### Working capital for SMEs under TO3 and TO1

We understand that by liquidity support you mean working capital support to SMEs.

The possibility for ERDF support to working capital in SMEs as a temporary measure to provide an effective response to a public health crisis introduced by the amended Article 3(1) of the ERDF Regulation is not linked to any specific thematic objective. However, indeed it would be usually most appropriate to implement such support under thematic objective 3. If such support is granted under thematic objective 1, in accordance with the introductory sentence of Article 5(1) ERDF Regulation, the support would have to contribute to strengthening research, technological development and innovation.

In addition, the amendment of Art 5(1)(b) ERDF Regulation by the Regulation (EU) 2020/460 extended the investment priority 1b, by allowing to finance under TO1 investments in products and services fostering the crisis response capacities in health services. SMEs that are providing health services, may be supported under this investment priority.

FI

Since the investment priority 3d Supporting the capacity of SMEs seems to be the most appropriate my question is. **Is it possible to use the liquidity support under the thematic objective 3** or is it only possibly under the thematic objective 1 (Letter from COM Brussels, 18 March 2020 Ares (2020) 1847818)? Is there a restriction concerning this in the proposals for amending the ERDF regulation 1301/2013 or the Common regulation 1303/2013?

## 5. Cohesion Fund

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) on [Apr 24, 2020](#)

***The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.***

### **CRII Plus Amendment**

Is it possible to transfer Cohesion Fund resources?

In accordance with the proposed Article 25a(2) as part of the CRII Plus package, the 1/3 share of the Cohesion Fund for Member States that joined on or after 2004 will not have indeed to be respected. This means that allocations for the year 2020 may be transferred between the ERDF, the ESF and the Cohesion Fund.

Point 6 of Annex VII CPR was used **exclusively** for establishing the initial envelopes for the Member States and updated allocations after the technical adjustment. It is not relevant in the context of the CRII Plus proposal.

LV

We ask confirmation from the Commission that the minimum share of the Cohesion Fund for Member States who joined the EU on or after 1st May 2004 set one third of their total final financial allocation in Annex VII point 6 will not have to be respected when MS chooses to benefit from newly proposed transfers between Cohesion fund, ERDF and ESF in Common Provisions Regulation Article 25a (2).

### **Scope of support**

Can health equipment for COVID-19 be supported under TO5 from Cohesion Fund?

The Commission did not propose to amend the Cohesion Fund Regulation (CF Regulation) as part of the CRII or CRII+ legislative proposals, therefore there are no changes in what can be financed from the Cohesion Fund. For investments to be eligible under the Cohesion Fund, they have to fall within the scope of the Fund as defined in Article 2 of CF Regulation and contribute to one of the investment priorities set out in Article 4 of the CF Regulation.

Based on above, the scope of support under the investment priority TO5(ii) (Article 4(b)(ii) of the CF Regulation) is limited to addressing specific risks, ensuring disaster resilience and developing disaster management system. In accordance with Article 2 of the CF Regulation, the scope of support of the Cohesion Fund under this investment priority would cover only investment in environment, i.e. environment-related risks and disasters. Only the

infrastructure and equipment that is directly linked to such risks and disasters can be supported by the Cohesion Fund. The healthcare equipment and medical devices that are necessary for addressing the COVID-19 outbreak falls under the needs and capacities of the general healthcare system, hence they are not covered by the CF under TO5.

It should be noted that, in accordance with Article 25a(2) CPR introduced by [the Regulation \(EU\) 2020/558](#) under the Coronavirus Response Investment Initiative Plus (COM(2020)138), it would be possible to transfer resources from the Cohesion Fund to the ERDF or to the ESF.

The response to COVID-19 outbreak in the form of health equipment and medical devices could be supported in particular by the ERDF under the second investment priority of thematic objective 1, as extended by Regulation (EU) 2020/460. In addition, the ERDF can as well, within its scope of support, co-finance investments to address specific risks, ensuring disaster resilience and developing disaster management systems under thematic objective 5. Preparedness in the form of support for equipment, infrastructure and training for response units is crucial. Such support [could include](#) investment in infrastructure (detection, early warning and alert systems) and acquisition of the needed studies, report, scientific data and knowledge to set up health-crisis related strategies, plans and programmes. It can also support information dissemination, capacity building of relevant stakeholders as well as health equipment and medical devices that are necessary for emergency response.

It should be noted that, in accordance with the additional derogation in Article 65(10) CPR introduced by Regulation (EU) 2020/460, all expenditure for operations fostering crisis response capacities in the context of COVID-19 outbreak shall be eligible as of 1 February 2020.

RO

Can health equipment and medical devices (emergency response equipment) be eligible under the Cohesion Fund?

## 6. European Maritime and Fisheries Fund

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) on [Apr 22, 2020](#)

***The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.***

What is the functioning of the Mutual Fund? Is this a new structure?

As the Coronavirus pandemic threatens the health of our citizens, many parts of the EU economy are also experiencing major disruptions. Fishing and aquaculture have been among the hardest hit sectors.

In this regard, the Commission recalls that the European Maritime and Fisheries Fund Regulation provides already for a variety of measures that could immediately be used in mobilising EU and Member State budget to support the fisheries and aquaculture sector in dealing with the Coronavirus pandemic.

For instance, under article 35 of the Regulation, the European Maritime and Fisheries Fund may contribute to mutual funds, which pay financial compensation to fishers for economic losses caused by adverse climatic events or by environmental incidents or for the rescue costs for fishers or fishing vessels in the case of accidents at sea during their fishing activities.

The Commission has proposed to extend the scope of insurance mechanisms in the European Maritime and Fisheries Fund to pay financial compensation for economic losses caused by a public health crisis. If Member States activate these measures, the European Maritime and Fisheries Fund could contribute to mutual funds (Article 35) or stock insurance contracts (Article 57) to compensate fishers and aquaculture farmers whose economic losses amount to more than 30 % of their annual turnover.

Although these measures have not been used by many Member States in their Operational Programmes, the newly introduced possibilities would allow health related impacts of Coronavirus to be included.

Member States are therefore encouraged to set up swiftly the mutual funds and stock insurance schemes and use their European Maritime and Fisheries Fund budget allocation to support these measures for the fishers and aquaculture farmers.

Furthermore, the new Temporary Framework for State aid adopted by the Commission on 19.03.2020 provides that temporary limited amounts of aid in the form of direct grants, repayable advances or tax advantages, guarantee on loans or subsidised interest rates for loans can be granted by Member States (national funding) to undertakings in the fisheries and aquaculture sector that face difficulties as a consequence of the Coronavirus pandemic.

The new Temporary Framework allows aid up to a level of €120,000 per undertaking active in the fishery and aquaculture sectors. Aid can be granted until 31 December 2020 to undertakings that face difficulties as a result of the Coronavirus outbreak.



Additional information at: [Coronavirus: European Commission helps Member States support local fishing and aquaculture communities through EU and national funds](#)

<b>BE</b>	With regard more specifically to the EMFF, can the Commission clarify the functioning of the Mutual Fund? Is this a new structure?
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Single insurance fund possibility under Articles 35 and 57 of the EMFF Regulation

One single insurance fund can operate the two measures but the respective conditions of Articles 35 and 57 of the EMFF Regulation (EU) No 508/2014 must be respected. These two Articles cover different Union Priorities. In particular, the respective specificities of these measures with regards to financial management, monitoring, reporting and audit requirements must be respected. A « virtual » split of expenditures among the two measures should also ensure that payment application to Commission can be made by Union priorities.

<b>NL</b>	Articles 35 and 57 provide for support by means of mutual funds for the fisheries sector, and aquaculture stock insurance. Can one fund be used for both purposes and sectors?
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Does the proposed amendment of EMFF Regulation in the field of CRII cater for the financing of set up of new funds?

No. The proposed amendment of the EMFF Regulation concerns Articles 35 and 57 of the Regulation. These articles bring support to existing insurance schemes but do not support the initial capital of these stocks.

<b>NL</b>	It is clear from both articles that only economic losses can be compensated through the funds. The articles do not support the setting-up of eventual funds. Are these articles aimed at the use of already existing funds?
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What kind of the decisions constitute recognition of public health crisis under the proposed EMFF Regulation amendment?

The proposed amendment of Articles 35 and 57 of the MFF Regulation require that a public health crisis has been recognized by the member State. To this purpose, a formal decision from a Member State according to its national legislation or own internal procedures constitutes a formal recognition of a public health crisis.

<b>NL</b>	Both articles require that a public health crisis has been recognized by the Member State. What constitutes the formal recognition of a public health crisis?
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Does “compensation of economic losses” means financial support to be granted at a later stage instead of as a form of immediate support?

Yes, the actual economic losses mentioned in the Amendment to Article 35 of the EMFF Regulation (and whether these exceed 30% of the average annual turnover) can only be established after *a posteriori*. That is why the related EU financial support can be granted only at a later stage.

<b>NL</b>	The actual economic losses (and whether these exceed 30% of the average annual turnover) can only be established after some time. Is it meant for the compensation of economic losses to be granted at a later stage, instead of as a form of immediate support?
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Is Inland Fisheries outside the scope of this CRII amendment to the EMFF ?

Yes, Article 44 of the EMFF Regulation concerning inland fisheries has no mirroring provision or reference to Articles 35 or 57 which are those subject to the CRII amendment. Therefore, it is correct to assume that inland fisheries can’t make use of an eventual fund stemming from the proposed amendment of the EMFF Regulation under the CRII.

<b>NL</b>	Article 44 dealing with inland fisheries makes no reference to article 35 or 57. Is it correct that inland fisheries therefore can’t make use of an eventual fund?
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When does a fisherman need to be affiliated to the mutual fund in order to be eligible for payment compensation?

In accordance with article 35 amendment pertaining compensation payments for fishermen affiliated to the mutual fund, fishermen must be affiliated at the moment of the selection of the operation in order to receive such a compensation. Therefore, retroactive affiliation is excluded under the proposed amendment.

<b>NL</b>	In accordance with article 35 compensation payments are made to fishermen which are affiliated to the mutual fund. Are fishermen that affiliate themselves retroactively also eligible to obtain compensation?
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## 7. European Solidarity Fund

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) on [Apr 30, 2020](#)  
Application deadline

The same deadlines as for progressively unfolding natural disasters apply for submitting *Solidarity Fund* applications for major public health emergencies. This means that the Member States and accession countries affected by a major public health emergency should apply within 12 weeks of the date on which the public authorities took official action against the emergency for the first time or from the date they declared a state of emergency. This is also the starting for the eligibility of expenditure.

In order to ensure an equitable treatment of all applications from eligible countries affected by **Covid-19** before the entry into force of the amending Regulation extending the scope of the EUSF to health emergencies, those countries may **submit a first summary application** within the deadline (e.g. by way of an official letter containing basic information.) **The Commission will accept** (in application of Art. 4 (1a) of the EUSF Regulation) **receiving updates/full information as requested in the application form within 12 weeks of the entry into force of the amended Regulation i.e. by 24 June 2020**. After that date the Commission will assess all applications jointly. There will be no “first come first served”. For the purpose of meeting the specific damage threshold the relevant public expenditure during the four months following the starting date set out above should be presented.

RO	According to the provision of Art. 4, para. 1(c), a Member State may submit an application within 12 weeks from the moment when the Emergency State is declared or from the date on which the public authorities of the eligible State take official action for the first time against the effects of the natural disaster. In this specific situation and having in mind the progressive and continuous evolution of Coronavirus outbreak we appreciate that the time-limit may be unrealistic. If this approach is taken, the costs incurred by the state BEFORE the declaration of the state of emergency can be included in the quantification of the direct damage and, subsequently, be considered as eligible? Please clarify these issues.
RO	We also like to clarify if considering the starting date of the 12 weeks period for submitting an application is the date when the State of Emergency is declared, can we also quantify and include in the application the expenditures incurred BEFORE this date (during a reasonable period of course, as some preventive measures were taken by the Government before the declaration of the national emergency). In Romania the State of Emergency was declared on 16th of March 2020.
BG	Substantial clarifications are needed on how to determine damages; the aid criteria and the timeframe for receiving the support
BE	From the different discussion held in the last days we understand that the support will be given on a first come first served basis. The current regulation states that we have 12 weeks from the day ‘the first damage was caused by the disaster’. How will this be calculated? Furthermore, several measures are still being put in place so no final estimated costs can be communicated at this time. By when does the Commission suggest to send our request? Does the Commission already have

	some indications from other Member States?
<b>MT</b>	As per Article 4 REGULATION (EU) No 661/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 amending Council Regulation (EC) No 2012/2002 establishing the European Union Solidarity Fund with regards to application deadline: As soon as possible and no later than 12 weeks after the first occurrence of damage as a consequence of a natural disaster, the responsible national authorities of an eligible State may submit an application for a financial contribution from the Fund. Should the first confirmed case of COVID-19 in the country be considered as the first occurrence of the damage?
<b>EE</b>	Are the application deadlines the same for health emergencies as for natural disasters i.e. 12 weeks from first damage or declaration of the state of emergency ? It seems that references to "health emergencies" have not been inserted to all relevant provisions. Therefore it is not clear if the rules are the same as for natural disasters, or if the intent is to apply different rules to health emergencies. The application deadline in Article 4 (1) is one example.
<b>EE</b>	Given that this crisis is not a singular event, but the public financial burden can incur over a longer period, we assume that the application can be updated after the 12 week period and first submission. Is this correct?
<b>RO</b>	We also like to clarify if the eligibility date of 1st of February 2020 (applicable to the ESIF) also applies to EUSF and if the Member State can quantify and include in the application the expenditures incurred between this date (1.02.2020) and the date when the Emergency State was declared (in Romania Emergency State was declared on 16th of March 2020).

#### Thresholds

A country is eligible for EUSF assistance if its public financial burden for response measures amounts to over EUR 1.5 billion (2011 prices) corresponding to 1.79 billion in current prices, or more than 0.3 % of its GNI, whichever is lower. This is exactly half of the thresholds for major (natural) disasters set at respectively 0.6% or EUR 3 billion (2011 prices).

For the applicable thresholds by country, see table in annex.

For calculating the threshold, the Commission would accept eligible expenditure directed at supporting the population and containing the spread of the disease during the four months following the start of the emergency , excluding business and labour market support. This may only include real (positive) public expenditure made by the countries and not tax revenue losses, guarantees or similar.

<b>BG</b>	Substantial clarifications are needed on how to determine damages; the aid criteria and the timeframe for receiving the support
<b>IE</b>	The table which was circulated in relation to the Thresholds for major disasters sets the threshold at 0.6% of GNI. Calculated on the basis of 0.6% GNI in 2018, this table sets that Threshold for Ireland at EUR 1 525.842m.

COM (2020) 114 final , Regulation amending Regulation no 1217/2002, refers. Article 2 (3) states that “for the purposes of this Regulation a “major public health emergency” means .....resulting in a public financial burden inflicted on the eligible State for emergency response measures estimated at over EUR 1 500 000 000 in 2011 prices , or more than 0.3% of its GNI.”

Our query is, can we take it that the amount cited in the table circulated, 0.6% of GNI in 2018, or 1 525.842 should be reduced to half of that ie 0.3% of GNI, or EUR 762.921m approx.

For the purpose of this calculation, can we include the newly introduced COVID 19 emergency income, provided to those made unemployed, by virtue of the closure of pubs and restaurants, in the interest of prevention of spreading of the disease.

### Eligible operations

Eligible operations will include all types of assistance to the population (medical and other) and all measures taken to contain the spreading of the disease, such as (non-exhaustive list):

- Medical assistance, including medicines, equipment and medical devices, costs of healthcare or civil protection infrastructure
- Laboratory analyses
- Extraordinary measures and extra costs in health and medical care associated with the COVID-19 virus
- Personal Protective Equipment
- Special assistance to the population, especially to vulnerable groups (elderly, people with health problems, pregnant women, single working parents....)
- Special support to keep medical and other emergency services personnel operational
- Development of vaccines or medicines
- Strengthening preparedness planning capacity and related communication
- Improving risk assessment and management
- Sanitation of buildings and facilities
- Health checks, including at the borders,
- and all related additional personnel costs

Only real expenditure made or projected **during the 4 months following the start of the emergency** (determined by the date of the first official measure against the crisis) is accepted. Measures to support businesses and the labour market are not eligible. This expenditure should be additional and directly linked to the emergency. Double financing of the same operation with other EU instruments is not permitted.

### RO

A list of eligible expenditures that can be counted in the application would clarify better different interpretation / misinterpretation made ex-post, for example during the audit missions. We are interested to receive guidance if measures to support the economic sector can be taken into account in direct response to the health crisis, such as state-aid schemes, measures for keeping jobs, fiscal measures, and (maybe) direct losses in taxes to the state budget (however, this last point would count only in establishing the threshold). Our interpretation is that

	<p>these kind of expenses can be covered by point “e” introduced in Art. 3 “Measures aiming.....combating severe risks to public health or mitigating their impact on public health”</p>
<b>RO</b>	<p>According to the provision of Art. 4, para. 1(c), a Member State may submit an application within 12 weeks from the moment when the State of Emergency is declared or from the date on which the public authorities of the eligible State take official action for the first time against the effects of the natural disaster. In this specific situation and having in mind the progressive and continuous evolution of the Coronavirus outbreak, the costs incurred by the state BEFORE the declaration of the state of emergency can be included in the quantification of the direct damage and, subsequently, be considered as eligible?.</p>
<b>RO</b>	<p>We also like to clarify if considering the starting date of the 12 weeks period for submitting an application is the date when the State of Emergency is declared, can we also quantify and include in the application the expenditures incurred BEFORE this date (during a reasonable period of course, as some preventive measures were taken by the Government before the declaration of the national emergency). In Romania the State of Emergency was declared on 16th of March 2020.</p>
<b>RO</b>	<p>An additional clarification is needed in respect of the period that can be considered in establishing the estimated amount of damage (a crisis situation in the case of a pandemic can exceed the period of 12 weeks).</p> <p>As the 12 weeks deadline remains unchanged and the effects of the current outbreak will continue to appear after this term, we kindly ask you to clarify if a Member State can include in the application (as eligible expenditures) the estimated value of the operations to combat the outbreak effects carried out or incurred AFTER the application is submitted. The quantification of the expenditures related to operations adopted within 3 months (12 weeks) might represent an underestimation of the actual effort of the Member State. In this respect, we would also need a clarification concerning a reference period for which the projected active measures can be taken into account at the time of elaboration of the application.</p>
<b>BE</b>	<p>For support from the CRII the Commission has indicated that they will be very flexible. The new article 3.1 (e) states “measures aiming at rapidly providing assistance, including medical, to the population affected by a major public health emergency and to protect the population from the risk of being affected, including prevention, monitoring or control of the spread of diseases, combating severe risks to public health or mitigating their impact on public health.” Can this be interpreted in the largest sense possible or are some interventions a priori excluded? (eg state aid measures, temporary unemployment)</p>
<b>MT</b>	<p>First of all, I would like to get more clarifications on the eligible operations under this type of eligible disaster (major public health emergency). As per proposed regulation: measures aiming at rapidly providing assistance, including medical, to the population affected by a major public health emergency and to protect the population from the risk of being affected, including prevention, monitoring or control of the spread of diseases, combating severe risks to public health or</p>

	<p>mitigating their impact on public health. Don't know if it is possible to obtain some examples of what can be considered as an eligible operation/action. In conjunction with this, also taking into consideration that Malta is one of the smallest countries in the world, and yet one of the most densely populated. Providing examples of what can be considered as eligible and not eligible would really be appreciated from our end.</p>
<p><b>IE</b></p>	<p>Article 3 is now amended to state that eligible areas of expenditure now include;</p> <p>(e) "measures aiming at rapidly providing assistance, including medical, to the population affected by a major public health emergency and to protect the population from the risk of being affected, including prevention, monitoring of control of the spread of diseases, combating sever risks to public health of mitigating their impact on public health".</p> <p>The number of areas of expenditure in Ireland, as in other Member States, is very broad indeed, and we are anxious only to include information in our application related to that subset of our overall public expenditure which is relevant to EUSF. Do you have additional information or examples of the eligible areas, for example:</p> <ul style="list-style-type: none"> <li>(i) Medical supplies to treat patients affected including ventilators, medicines, protective masks / other clothing</li> <li>(ii) Physical infrastructure and equipment, including additional makeshift hospitals, beds etc</li> <li>(iii) Additional medical staff recruited, or returning to work from retirement, and overtime for medical personnel</li> <li>(iv) Newly agreed COVID 19 payment of €30 per patient to all GPs who are consulting, in person, by phone and online, with suspected cases</li> <li>(v) Public health information</li> <li>(vi) Sickness payments to medical staff who become infected, to enable them to self isolate.</li> <li>(vii) Services provided to persons medically advised to self-isolate, on the basis of their vulnerable health (eg elderly, those with compromised immunity)</li> <li>(viii) Sickness payments to staff other than medical staff, who become infected, and are medically advised to self isolate, to prevent the spread of the virus.</li> <li>(ix) The provision of new / additional accommodation to facilitate social isolation for those otherwise living in more crowded conditions e.g. emergency housing for homeless families, accommodation for migrants in direct provision facilities, whose applications for asylum has not yet been processed.</li> </ul>
<p><b>EE</b></p>	<p>What is the scope of activities envisaged? Examples would be welcomed.</p>

<p><b>EE</b></p>	<p>One of the very urgent costs we have identified relate to purchasing different personal protective equipment (such as FFP masks, gloves, overalls, goggles) and medical equipment (testing equipment, respirators).</p> <p>We understand from the answers received so far, that these costs can be co-funded from ERDF, ESF and also from EUSF. As our financial capacity to reprogram is limited and there are other extensive crisis related investment needs as, which we are considering under ERDF and ESF, we would very much appreciate if you could provide some information on the modalities of EUSF (we also submitted questions on that). Finding the best solution to cover the above mentioned costs could also be one of the topics for our bilateral discussion.</p>
<p><b>PT</b></p>	<p>The measures described in Article 3(2)(e) of the Regulation (EC) No 2012/2002 amendment proposal allow the EUSF to finance expenditures related with the:</p> <ol style="list-style-type: none"> <li>1. Reinforcement of the NHS (hiring staff to strengthen the response capacity)</li> <li>2. Personal protective equipment</li> <li>3. Tests to detect the coronavirus</li> <li>4. Ventilators</li> <li>5. Field hospitals</li> <li>6. Measures to support the social protection of workers and their families</li> <li>7. Measures for the organization and operation of public services and other establishments (e.g. security forces' extra costs)</li> </ol> <p>While it is the understanding of the National Authorities that the above expenditure may be financed by the EUSF, we request such confirmation, in particular for the expenditures described in 6 and 7</p>

Available budget - financing rates – aid amounts

The Solidarity Fund is a special instrument outside the normal EU budget. Its mobilisation requires the approval of the European Parliament and of the Council. Its maximum annual allocation is EUR 500 million (in 2011 prices, currently EUR 598 million) plus any unspent amount of the preceding year (accordingly, EUR 553 million were carried forward from 2019 to 2020). Currently, the amount still available in 2020 is around EUR 800 million. Additional amounts earmarked for the currently pending four applications from Portugal, Spain, Italy and Austria have been set aside plus for two other applications that Spain has announced for storm Gloria and Croatia for the recent earthquake.

For determining individual aid amounts, the Commission will apply the same method as for natural disasters. Accordingly, a country receives 2.5% of the total amount of eligible public response spending up to the country-specific threshold for major health emergencies. For the part of the spending exceeding the threshold 6% are paid.



This method ensures that the relative capacity of a State to deal itself with a disaster is taken into account. It also ensures that for the same financial burden relatively poorer countries receive more aid in absolute terms than richer ones.

Should this calculation lead to a total amount for all countries exceeding the available budget appropriations, the amounts per country would be reduced on a pro rata basis. As all Covid-19 related applications will be dealt with in a single package, there will be no “first come, first served” payments.

<b>BE</b>	Currently the financing rates are set at 2,5% or 6%. Will these rates be kept?
<b>EE</b>	How will the Commission prioritise applications if many Member States decide to submit one and amounts exceed the budget available?
<b>EE</b>	What are the EU support rates? Will they stay the same as today for natural disasters (2,5% under the eligibility threshold and 6% above it according to Commission guidelines)?
<b>EE</b>	How much EUSF exactly is available in 2020, with the carry-overs from last year and taking into account the existing pipeline of natural disaster cases?
<b>PT</b>	Finally, given the available budget and due to the fact that the pandemic is affecting most Member States, it would be important to clarify with the Commission if specific rules or priorities will be defined for the allocation of the available funds

Application form, guidance

With the entry into force of the amended EUSF Regulation on 1 April, the Commission has published a dedicated webpage [https://ec.europa.eu/regional\\_policy/en/funding/solidarity-fund/covid-19](https://ec.europa.eu/regional_policy/en/funding/solidarity-fund/covid-19) on the Solidarity Fund website providing all relevant information for applicants including a specific application form and guidelines. Applicants should use the form and guidance and provide the information requested therein. As for natural disasters, the Solidarity Fund team in DG REGIO will continue to provide further guidance throughout the process as required. Contact details are available on the website.

<b>BE</b>	Will the Commission present an updated form that Member States will have to fill in? Or can we work on the one currently available on the website of DG Regio?
<b>MT</b>	Will there be any changes to the current EUSF application form for financial assistance?
<b>MT</b>	Lastly, in case we would like to apply, is there a specific contact person/ Commission staff assigned? I am asking this in case we would like to discuss our potential applications at the drafting stage. (Although not sure if Member States can contact the Commission staff and discuss their potential applications at the drafting stage.)
<b>PT</b>	In accordance with Article 4 of Regulation (EC) No 2012/2002, remain unchanged, information is requested on total direct damage caused by the disaster and its

	impact on the population, the economy and the environment, and this information will be taken into account when calculating EUSF support. In the case of public health emergencies, how should this concept be interpreted?
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Timing - eligibility period - retroactivity

Expenditure (already made and projected) is eligible retroactively from the start of the emergency during a period of 4 months. The 4 months period may include projected expenditure going beyond the final deadline for the submission of applications (24 June 2020).

All applications received within 12 weeks following the entry into force of the amended Regulation, i.e. by 24 June 2020, will be dealt with in a single package. The Commission will then transmit a summary of its assessment of the cases to the European Parliament and the Council as quickly as possible together with a draft mobilisation decision and financial proposal. The aid can be paid out shortly after adoption of the mobilisation decision by the budget authority still in 2020.

<b>RO</b>	An additional clarification is needed in respect of the period that can be considered in establishing the estimated amount of damage (a crisis situation can exceed the period of 12 weeks). If the 12 weeks deadline remains unchanged, and the effects of the current outbreak will continue to appear after this term, we ask you to clarify if a Member State can include in the application (as eligible expenditures) the estimated value of the operations to combat the outbreak effects carried out or incurred after the application is submitted. The quantification of the expenditures related to operations adopted within 3 months (12 weeks) represent an underestimation of the actual effort of the Member State. In this respect, we would need a clarification concerning a reference period for which the projected active measures can be taken into account at the time of elaboration of the application.
<b>RO</b>	We kindly ask you for a quick clarification regarding the 4 months period considered as eligible - If, for example, a country has taken the first official action on March 10th (which means that until June 24th there are less than 4 months), can the updated application form also include the expenses projected to be made between June 24th and July 10th (when the 4 months period actually end)? – or, whatever the starting date chosen, the 4 months period cannot exceed June 24th?
<b>BG</b>	Substantial clarifications are needed on how to determine damages; the aid criteria and the timeframe for receiving the support
<b>EE</b>	What is the timeline (for applications and the ensuing procedure) envisaged and necessary to enable the reception of the full payment of the EUSF funding by the Member State still within 2020?

EUSF thresholds 2020 for major health emergencies

(based on Eurostat figures for 2018 Gross National Income)

For the mobilisation of the EU Solidarity Fund country-specific thresholds apply.

For **natural disasters** total direct damage must exceed 0,6% of GNI or € 3 billion in 2011 prices.

For **major public health emergencies** total public expenditure related to the crisis must exceed 0,3% of GNI or € 1,5 billion in 2011 prices.

In both cases the lower amount applies.

						(million EUR)
		GNI 2018	0.6% of GNI	Natural disaster threshold 2020	0.3% of GNI	Health crisis threshold 2020
AT	ÖSTERREICH	384.653	2.307,918	2.307,918	1.153,959	1.153,959
BE	BELGIË/BELGIQUE	462.774	2.776,644	2.776,644	1.388,322	1.388,322
BG	BULGARIA	56.570	339,420	339,420	169,710	169,710
CY	KYPROS	20.388	122,328	122,328	61,164	61,164
CZ	ČESKÁ REPUBLIKA	196.199	1.177,194	1.177,194	588,597	588,597
DE	DEUTSCHLAND	3.437.908	20.627,448	3.585,278	10.313,724	1.792,639
DK	DANMARK	305.366	1.832,196	1.832,196	916,098	916,098
EE	EESTI	25.549	153,294	153,294	76,647	76,647
EL	ELLADA	183.740	1.102,440	1.102,440	551,220	551,220
ES	ESPAÑA	1.204.894	7.229,364	7.229,364	3.614,682	1.792,639
FI	SUOMI/FI	235.241	1.411,446	1.411,446	705,723	705,723
FR	FRANCE	2.406.070	14.436,420	3.585,278	7.218,210	1.792,639
HR	HRVATSKA	50.546	303,276	303,276	151,638	151,638
HU	MAGYARORSZÁG	128.421	770,526	770,526	385,263	385,263
IE	ÉIRE/IE	254.307	1.525,842	1.525,842	762,921	762,921
IT	ITALIA	1.784.620	10.707,720	3.585,278	5.353,860	1.792,639
LT	LIETUVA	43.811	262,866	262,866	131,433	131,433
LU	LUXEMBOURG (G.D.)	38.256	229,536	229,536	114,768	114,768
LV	LATVIJA	28.649	171,894	171,894	85,947	85,947
MT	MALTA	11.355	68,130	68,130	34,065	34,065
NL	NEDERLAND	781.718	4.690,308	3.585,278	2.345,154	1.792,639
PL	POLSKA	476.858	2.861,148	2.861,148	1.430,574	1.430,574

PT	PORTUGAL	199.411	1.196,466	1.196,466	598,233	598,233
RO	ROMÂNIA	198.675	1.192,050	1.192,050	596,025	596,025
SE	SVERIGE	478.524	2.871,144	2.871,144	1.435,572	1.435,572
SK	SLOVENSKO	88.303	529,818	529,818	264,909	264,909
SI	SLOVENIJA	45.034	270,204	270,204	135,102	135,102
UK	UK	2.386.586	14.319,516	3.585,278	7.159,758	1.792,639
ME	MONTENEGRO	4.718	28,308	28,308	14,154	14,154
TR	TÜRKIYE	743.610	4.461,660	3.585,278	2.230,830	1.792,639
RS	SRBIJA	40.642	243,852	243,852	121,926	121,926
ALB	ALBANIA	12.779	76,674	76,674	38,337	38,337
MKD	NORTH MACEDONIA	10.284	61,704	61,704	30,852	30,852

## 8. Financial instruments implemented by EIF

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)  
Which guarantee facilities will be increased?

The European Commission and EIF are working intensively to provide a swift response to the European SMEs affected by the COVID-19 virus outbreak and the economic shock triggered by this emergency.

As part of the immediate response, EUR 1 billion of EFSI resources will be allocated for the increase of existing guarantee facilities managed by EIF:

- InnovFin SME Guarantee and
- COSME Loan Guarantee.

Furthermore, the EIF and the Commission are working intensively on adapting the terms and conditions of these guarantee facilities to better respond to the extraordinary circumstances.

For instance, it will prioritise working capital finance, extending guarantee rate for newly originated loans, allowing for rescheduling, postponement or credit holidays of underlying loans by the financial intermediaries that would be covered by the guarantee, providing for more flexible use of the guarantee for revolving credit transactions.

Please note that further details will be published soon on the EIF website including in the form of a call for expression of interest for intermediaries

<b>FR</b>	Est-il possible de redéployer les instruments et accords existants entre les intermédiaires nationaux et le FEI vers du financement de crise (trésorerie de PME, etc.) ?
<b>FR</b>	Quels sont les mécanismes de mobilisation relatifs au milliard d'euros additionnel du fonds Juncker ?

Will there be modifications to the COSME Loan Guarantee Facility?

The European Commission already works on a modification of the COSME Loan Guarantee Facility. Details are available here: <https://www.eif.org/attachments/covid-19-notice-to-financial-intermediaries-20032020.pdf>

<b>EE</b>	The terms of COSME could also be revised (there is a requirement for "additionality" and increasing financial volumes), which has become a pretty big obstacle for us.
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# 9. European Globalisation Adjustment Fund

• Created by [Nathalie COLLIN](#), last modified by [Maria-Teresa THUN-HOHENSTEIN](#) on [Apr 20, 2020](#)

Application of Article 4(2) of the EGF regulation in the context of Covid-19

In view of the socio-economic consequences of the COVID-19 crisis, the Commission considers that the EGF could be mobilised for Covid-related permanent redundancies. Article 4(2) could be applied in cases when the threshold set in Article 4(1) cannot be reached and it can be demonstrated that the redundancies nevertheless have a serious impact on employment and the local, regional or national economy. Exceptions need to be in line with the general philosophy of the EGF: to help people made redundant following unexpected situations. The EGF is a safety net for those who lost their jobs despite all other efforts. For workers who are still in employment but might lose their job, the ESIF funds are the right tool to help. As concerns the reference periods: it is always possible to apply shorter reference periods, if needed.

<b>LV</b>	Are we supposed to apply Article 4(2) of the EGF regulation in the context of Covid-19? Because due to the emergency and unprecedented situation we will not be in a position to respect such "regular" EGF criteria (Article 4.1) as, for example, workers are definitely redundant, at least 500 workers threshold, reference period of four/ nine months is hardly feasible.
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Declaration of economic crisis and mobilisation of EGF

The European Council acknowledged the gravity of the socio-economic consequences of the COVID-19 crisis and the need to do everything necessary to meet this challenge in a spirit of solidarity. The Commission is, therefore, of the opinion that the EGF can be mobilised by a decision of EP and Council, following a request presented by a Member State and in compliance with the existing EGF Regulation.

<b>MT</b>	<p>We have heard that an economic crisis might only be declared by the Commission after two consecutive quarters of decline. This is typically what is required to determine that there is a recession, however, a recession is not necessarily a crisis and an economic crisis could be determined prior to there being sufficient data to establish that there is a recession.</p> <p>In this respect, could the Commission kindly clarify the basis for the decision to wait for the data for two quarters to decide that this is an economic crisis? Will such a wait not result in ineffective measures, or increased redundancies</p>
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## 10. State Aid

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)

### **Flexibility of State aid rules in relation to the crisis**

Where can I find the renewed guidance on State aid?

In the current context, the Commission has adopted temporary rules to allow an easy compliance with State aid rules, including lighter conditions and reduced requirements. Urgent crisis measures will get a quick and priority treatment, whether under the temporary framework or to compensate damages caused by the COVID-19 under 107,2,b .

State aid related information can be found on COMP website, which is constantly updated to provide MS with all necessary elements:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

The link to the Temporary Framework adopted on 19/03/20 is published on the website, and soon templates of the information needed for a quick assessment of their measures will also be published there. The Commission has adopted the Temporary framework in relation to the COVID-19 outbreak to clarify the types of measures that can be considered compatible with the internal market on the basis of Article 107,3,b (aid to remedy to a serious disturbance of the economy). This Temporary framework provides for several types of measures: compatible limited amount of aid in form of direct grants, repayable advance or tax advantages, up to EUR 800,000 per undertaking, aid in the form of guarantees or loans to cover current and future temporary liquidity needs, implemented directly or through credit institutions or financial intermediaries and aid in the form of subsidised interest rates.

Moreover, Member States can set up compensation schemes for COVID-19 related damages. Such schemes, upon notification to the Commission, shall be considered compatible with the internal market on the basis of Article 107,2,b TFEU if the granting authorities establish the link between the COVID-19 outbreak and consequences and the scheme. Member States may already find a template of the information needed in a such a notification on DG COMP's website mentioned above.

To facilitate a quick and priority treatment to such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

<b>LT</b>	When the renewed guidance on State aid will be disseminated?
<b>BG</b>	Does the Commission intend to take into account that due to the crisis, full compliance with state aid rules in the implementation of projects will not be possible to be fully monitored? In this regard, are there any temporary reliefs for companies?

State aid and force majeure

To facilitate Member States adoption of adequate and quick measures, the priority of the Commission has been to design a temporary framework allowing different types of support, including through financial instruments, with lighter requirements to give Member State the means to address different types of needs, while ensuring that the EU Internal Market is not fragmented and that the level playing field stays intact. Member States are therefore invited to use the possibilities of the Temporary framework and Article 107,2,b in priority. Notifications of scheme will have a quick and priority treatment, providing Member States use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu)

<b>SI</b>	Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?
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The state aid revision should align approaches with start of eligibility to 1 February.

State aid measures to compensate damages caused by an exceptional occurrence can cover COVID-19 related damages, provided the link between the damages and the exceptional occurrence is demonstrated by the MS. Other types of support can now be provided under the temporary framework, which validity is until 31 December 2020.

<b>UK</b>	<p>The legislative proposal for ERDF foresees an eligibility from 1 February 2020. The foreseen state aid measures foresee a starting date of 1 March 2020 and an ending date of 30 September 2020.</p> <p>(1) The state aid revision should align approaches with start of eligibility to 1 February.</p> <p>(2) We don't believe that the recession will be over in September 2020. The exceptions should be granted for a longer period – at least for another year.</p>
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How is the issue of state aid to be tackled in cases of identified crisis-related actions falling outside the scope of those already exempted from notification under Regulation 651/2014?

Crisis related measures constituting State aid that are not exempted from notification under regulation 651/2014 have to be notified to the Commission. The Commission has adopted on 19/03/20 a Temporary framework in relation to the COVID-19 outbreak to clarify the types of measures that can be considered compatible with the internal market on the basis of Article 107,3,b (aid to remedy to a serious disturbance of the economy). This Temporary framework provides for several types of measures: compatible limited amount of aid in form of direct grants, repayable advance or tax advantages, up to EUR 800,000 per undertaking, aid in the form of guarantees or loans to cover current and future temporary liquidity needs, implemented directly or through credit institutions or financial intermediaries and aid in the form of subsidised interest rates. The link to the Temporary Framework is published on the website, and soon templates of the information needed for a quick assessment of their measures will also be:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)



Moreover, Member States can set up compensation schemes for COVID-19 related damages. Such schemes, upon notification to the Commission, shall be considered compatible with the internal market on the basis of Article 107,2,b TFEU if the granting authorities establish the link between the COVID-19 outbreak and consequences and the scheme. Member States can already find a template of the information needed in a such a notification on DG COMP's website mentioned above.

To facilitate a quick and priority treatment to such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

<b>BG</b>	How is the issue of state aid to be tackled in cases of identified crisis-related actions falling outside the scope of those already exempted from notification under Regulation 651/2014?
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Dates of anti-crisis measures concerning state aid

In accordance with Article 107(2)(b) of the Treaty on the functioning of the European Union (TFEU) State aid measures to compensate damages caused by an exceptional occurrence can cover COVID-19 related damages, provided the link between the damages and the exceptional occurrence is demonstrated by the Member State. In accordance with Article 107(3)(b) TFEU to remedy a serious disturbance in the economy of a Member State other types of support can now be provided under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, adopted on 19 March 2020.

- To align with the approach taken under the Commission proposal in the context of the Coronavirus Response Investment Initiative, the Temporary Framework will apply to aid granted after 1 February 2020 rather than after the 1 March 2020.
- The Temporary Framework will apply until 31 December 2020. As indicated in the communication (see paragraph 39) the Commission may review the temporary rules based on Article 107(3)(b) TFEU before that date on the basis of important competition policy or economic considerations.

To facilitate a quick and priority treatment to such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a State aid measure: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu) . Further information could be found on the dedicated page on the website of DG Competition:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html)

<b>IT</b>	The legislative proposal for ERDF foresees an eligibility from 1 February 2020. The foreseen state aid measures foresee a starting date of 1 March 2020 and an ending date of 30 September 2020.
	(1) The state aid revision should align approaches

with start of eligibility to 1 February.

(2) We don't believe that the recession will be over in September 2020. The exceptions should be granted for a longer period – at least for another year.

Will there be any changes in the manner of notification and acceptance of aid programs?

To help Member States set up state aid schemes with lighter requirements than those of normal rules, the Commission has adopted on 19/03/20 a Temporary framework in relation to the COVID-19 outbreak to clarify the types of measures that can be considered compatible with the internal market on the basis of Article 107,3,b (aid to remedy to a serious disturbance of the economy). This Temporary framework provides for several types of measures, specifically to support enterprises facing liquidity issues, such as compatible limited amount of aid in form of direct grants, repayable advance or tax advantages, up to EUR 800,000 per undertaking, aid in the form of guarantees or loans to cover current and future temporary liquidity needs, implemented directly or through credit institutions or financial intermediaries and aid in the form of subsidised interest rates. The link to the Temporary Framework is published on the website, and soon templates of the information needed for a quick assessment of their measures will also be:

[https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html).

To facilitate a quick and priority treatment to such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

**PL** Will there be any changes in the manner of notification and acceptance of aid programs?

Is it possible to apply exceptions from the stimulation effect?

The requirement that State aids have an incentive effect is not a condition for aid granted on a scheme approved under article 107.2.b to compensate damages due to an exceptional occurrence, nor for direct grants, guarantees or loans granted on a scheme approved under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, to remedy a serious disturbance of the economy of a MS. MS can find more information on the flexibilities offered by State aid rules in the current temporary crisis on: [https://ec.europa.eu/competition/state\\_aid/what\\_is\\_new/covid\\_19.html](https://ec.europa.eu/competition/state_aid/what_is_new/covid_19.html).

For both types of measures ( in case of compensation of damages or under the Temporary Framework) , schemes have to be notified. To facilitate a quick and priority treatment to such notifications, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

**SK** Is it possible, for state aid, to apply exception from the stimulation effect (the stimulation effect does not make it possible to refund regular expenditures the beneficiary would pay anyway, however, the draft

amendment to the regulation makes it possible to reimburse operating costs; the second aspect of the stimulation effect is that the beneficiary should not commence the project before the funding is approved, however, the draft amendment specifies eligibility as of 1 February 2020).

## **Articulation between Temporary Framework, General Block Exemption Regulation (GBER) and de minimis Regulation**

Operating aid under Temporary Framework cumulative with GBER?

Operating aid granted on the basis of the Temporary Framework can be cumulated with aid under the GBER provided the general rules under article 8 GBER are respected. Thus, if aid under the temporary framework is not granted for specific/identifiable eligible costs, they are not to be taken into account to assess compliance with the maximum ceilings of aid granted for identifiable eligible costs under the GBER.

**FR** Concernant les aides d'état, est-ce que les aides au fonctionnement dans le cadre des mesures de réponse à la crise sanitaire sont cumulables avec les aides existantes hors plafond RGEC ?

"De minimis" rules and COVID-19 measures

The temporary aid measures provided for by the temporary framework can be cumulated with aid falling within the scope of the de minimis Regulation. A compatible limited amount of aid scheme has however to be notified to be implemented. Aid falling within the scope of the de minimis Regulation has to be granted in compliance with the requirements of this Regulation, including in terms of maximum ceiling.

**BG** If the companies have used their "de minimis" budget and have received 200 000 EUR in the last three financial years - is it possible to be funded again with up to 200 000 EUR in case they fall within the scope of the anti COVID-19 measures or such funding is considered state aid and has to be notified?

Compliance with the de minimis rule - declaration of honour on the undertakings receiving support - exempting businesses from this administrative burden during the crisis period related to COVID 19?

This is not currently considered. In the context of the current health crisis, changes in the existing state aid rules, including the de minimis regulation, have not been the preferred way to give some flexibility to MS. The priority of the Commission has been to design a temporary framework allowing different types of support- including a compatible limited amount of aid up to 800 000- with lighter requirements to give MS the means to address different types of needs, while ensuring that the EU Internal Market is not fragmented and that the level playing field stays intact.

Current existing rules might not be the most appropriate legal basis to support companies in the current time as MS would need to check, for SA compliance purpose, that all the other requirements of the regulations have been respected. Member States are therefore invited to use the possibilities of the Temporary framework, providing they notify a scheme . Quick and priority treatment will be given to such notifications, and to that purpose, Member States are invited to use the specific following address to contact DG Competition as early as possible when designing a scheme: [COMP-COVID@ec.europa.eu](mailto:COMP-COVID@ec.europa.eu).

<b>BE</b>	<p>In the context of compliance with the de minimis rule, Wallonia chose the option (provided for in the rules) to have a declaration of honour on the undertakings receiving support in this legal framework signed. Through this document, SMEs demonstrate that they are under the conditions laid down in the legislation.</p> <p>The question is, therefore, to consider exempting businesses from this administrative burden during the crisis period related to COVID 19?</p>
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Proposals modifying state aid rules and financial instruments  
 For proposals aiming at modifying existing state aid rules, whether de minimis regulation , or GBER. Such proposed changes would not be appropriate for the current situation as MS would need to check, for State Aid compliance purpose, that all the other requirements of the regulations have been respected. The priority of the Commission has been to design a temporary framework allowing different types of support, including through financial instruments, with lighter requirements to give MS the means to address different types of needs, while ensuring that the EU Internal Market is not fragmented and that the level playing field stays intact. Member States are therefore invited to use the possibilities of the Temporary framework , of Article 107,2,b in priority.

<b>BG</b>	<p>Consider increasing the de minimis threshold        Regulation 1407/2013 and 1408/2013        Art. 21 GBER to allow SME financing without a requirement for private co-financing as well as to allow financing of Mid-caps and to undertakings in difficulty        Guidelines on state aid to promote risk investment to reduce significantly (e.g. to 5%) the required private invests so to achieve real economic significance        Art 53 of the GBER so that cultural infrastructure aid is eligible for 100% of the costs and without requirement for share of time or floorage use        Art. 16 of GBER to reduce the required private co-financing to 10% and derogation of the requirement to finance eligible costs under the ESIF Directive 24/2014 and, respectively the local Public Procurement Law to allow an exception for selection of financial intermediaries without PPA procedure</p>
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	Directive 24/2014 and, respectively the local Public Procurement Law to allow an exception for selection of financial intermediaries without PPA procedure.
<b>PL</b>	SMEs: Are you considering raising the de minimis aid threshold for SMEs?

Operating aid under GBER

Operating aid granted on the basis of the Temporary Framework can be cumulated with aid under the GBER provided the general rules under article 8 GBER are respected. Thus, if aid under the Temporary Framework is not granted for specific/identifiable eligible costs, they are not to be taken into account to assess compliance with the maximum ceilings of aid granted for identifiable eligible costs under the GBER.

<b>FR</b>	Regarding State aid, can operating aid as part of the response to the health crisis be cumulated with existing aid beyond the GBER ceilings?
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## **Specific questions on Temporary framework**

Is it allowed, in terms of COVID 19 Temporary Framework, to allocate direct grants covering working capital needs even if not for the purpose of concrete, already approved project (developing services, products etc.), but only for liquidity problems, business survival of a beneficiary?

Paragraph 22 of the temporary framework provides for direct grants for this purpose, without any requirement in terms of eligible costs or projects.

<b>SI</b>	Is it allowed, in terms of COVID 19 Temporary Framework, to allocate direct grants covering working capital needs even if not for the purpose of concrete, already approved project (developing services, products etc.), but only for liquidity problems, business survival of a beneficiary?
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Change in the definition of a difficult situation

Support under the temporary framework under paragraph 22 (aid in the form of grant, repayable advance or tax advantages) may be granted to undertakings that were not in difficulty (within the meaning of the General Block Exemption Regulation<sup>15</sup>) on 31 December 2019; it may be granted to undertakings that are not in difficulty and/or to undertakings that were not in difficulty on 31 December 2019, but that faced difficulties or entered in difficulty thereafter as a result of the COVID-19 outbreak; National authorities have therefore to check the financial situation of companies on 31 December 2019: in case those firms were already in difficulty prior to this date and the outbreak of the COVID 19, they cannot benefit from the support under TF, but can get rescue and restructuring aid, on

the basis of Article 107(3)(c) TFEU upon notification of an ad hoc aid or a notified aid schemes to meet acute liquidity needs and support undertakings facing financial difficulties, also due to or aggravated by the COVID-19 outbreak.

<b>BG</b>	Since, according to the Temporary Framework for State Aid Measures to Support the Economy in the Current COVID-19 Outbreak, enterprises in difficulty will not be able to support themselves, what change in the definition of a difficult situation is intended (excluding those referred to in par. 20 c)?
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Given that the assessment of undertakings in difficulty should take place on the basis of the latest approved financial statements (not already available), does the Commission intend to adopt simplified procedures to identify undertakings in difficulty at the time the aid is granted?

Checking the financial situation of companies on 31 December 2019 should be based on the GBER definition. In case at that date the latest approved financial statements are not available, the granting authority may use the available financial data to make its assessment if aid is granted under Temporary Framework. If aid is granted based on the General Block Exemption Regulation or another State aid legal basis, the normal rules laid down in these Frameworks, Guidelines or Regulations need to be complied with.

<b>IT</b>	Given that the assessment of undertakings in difficulty should take place on the basis of the latest approved financial statements (not already available), does the Commission intend to adopt simplified procedures to identify undertakings in difficulty at the time the aid is granted?
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## **SMEs**

Measures envisaged as regards aid to the SMEs

The State aid Temporary Framework adopted by the European Commission on 19 March 2020 to support the economy in the context of the COVID-19 outbreak, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union, recognises that the entire EU economy is experiencing a serious disturbance.

To remedy that, the Temporary Framework provides for five types of aid:

- (i) Direct grants, selective tax advantages and advance payments: Member States will be able to set up schemes to grant up to €800,000 to a company to address its urgent liquidity needs.
- (ii) State guarantees for loans taken by companies from banks: Member States will be able to provide State guarantees to ensure banks keep providing loans to the customers who need them.

(iii) Subsidised public loans to companies: Member States will be able to grant loans with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.

(iv) Safeguards for banks that channel State aid to the real economy: Some Member States plan to build on banks' existing lending capacities, and use them as a channel for support to businesses – in particular to small and medium-sized companies. The Framework makes clear that such aid is considered as direct aid to the banks' customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.

(v) Short-term export credit insurance: The Framework introduces additional flexibility on how to demonstrate that certain countries are not-marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.

The above Temporary Framework complements the many other possibilities already available to Member States to mitigate the socio-economic impact of the COVID-19 outbreak, in line with EU State aid rules.

Given the limited size of the EU budget, the main response will come from Member States' national budgets. Member States have already available many possibility to help mitigating the socio-economic impact of the COVID-19 outbreak, in line with EU State aid rules. For example, Member States can make generally applicable changes in favour of businesses (e.g. deferring taxes, or subsidising short-time work across all sectors), which fall outside State Aid rules. They can also grant compensation to companies for damage suffered due to and directly caused by the COVID-19 outbreak. This can be useful to support particularly impacted sectors, such as transport, tourism, hospitality and retail.

<b>BE</b>	It is essential for the Commission to clarify the types of measures envisaged, particularly as regards aid to the SMEs which will be mainly affected.
<b>BG</b>	Does the Commission intend to take into account that due to the crisis, full compliance with state aid rules in the implementation of projects will not be possible to be fully monitored? In this regard, are there any temporary reliefs for companies?

# 11. Fiscal framework

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)

We will respond promptly to any question received.