



CRII Q&A platform, date of export: 3. 4. 2020 – 10.00

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

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

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

BE	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?
FR	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 [Attila SZAKATS](#) yesterday at 4:55 PM

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^[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. 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 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

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?

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 other EU instruments. Our institutions involved in the management of EU funds and beneficiaries request clarification from the Managing Authority – we cannot provide

	<p>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>
HR	<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>
ETC	<p>We are receiving questions from several Interreg programmes on eligibility of expenditure of cancelled missions and meetings due to the Corona-virus.</p>
ETC	<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>
DE-CZ ETC	<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>
SI-HU ETC	<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>
EE-LV ETC	<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</p>

be a case of *force majeure* and costs for activities cancelled due to the proliferation of Covid-19 are eligible under the following conditions:

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);

the beneficiary has exhausted all possibilities to reimburse the expenditure incurred;

the beneficiary submits via e-MS with partner report:

- information on abandonment of activities, in case of simplified cost reimbursement methods merely this information will be sufficient;
- proof that the beneficiary cannot reimburse or can reimburse only partly the amount paid to the organizer of activity;
- credit notes (accommodation, airline tickets, etc.);
- documentation on expenses that have not been reimbursed.

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.

DK

If there conferences and events which do not take place because of COVID19, but for which costs are incurred, are these costs eligible?

PL

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?

LT

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.

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?

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 cancelled the event, how the costs incurred by the promoter should be treated

Will the following costs be eligible:

CZ 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.

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.

SK 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?

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."*

LV

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.

SI- HU ETC	<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>
SI- HU ETC	<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>
DE- CZ ETC	<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>
UK	<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>
CY	<p>Can we terminate ongoing projects? Which projects?</p>
UK	<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>
BG	<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>
CZ	<p>Extension of project realization even beyond the limit set in calls. Most projects of 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.).</p>
SI	<p>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?</p>

SK

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 proposal COM (2020) 113).

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.

<p>HR</p>	<p>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.</p>
<p>SI</p>	<p>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?</p>

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.

UK

Where activity is significantly delayed or ceased, has consideration

	been given to extending the programme?
PL	Does the EC presume any extensions of all applicable deadlines?

Lighter selection of operations and procurement?

First, it should be recalled that the legislative framework for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. Based on the above, 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) of CPR.

These two Articles 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, it is possible to select an operation that has started before the submission of an application for funding to the Managing Authority, but is not physically completed or fully implemented (provided that the applicable law relevant for the operation has been complied with), and 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.

UK	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?)
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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.

CZ	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^[1]. 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.

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.

EE	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.
HR	Possibility for reallocation to non-performing priorities

Indicators' targets in the context of crisis response

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

The Commission proposal for the new Article 30(5) CPR 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.

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.

EE	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)?
FR	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 ?

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?

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/)

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.

UK	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?
PL	Will the EC services allow deviations from the values of indicators assumed in projects and programs?

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.

BE	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
DE	Please confirm, that the use of the Coronavirus Response Investment Initiative is optional. The MS have no obligation to modify ERDF programmes.
NL	<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</i></p>

of 1 February 2020.”]

FR

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.

PL

What will be the timeframe for implementation of projects by hospitals related to COVID-19 crisis? Also 31.12.2023?

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.

NL

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?

Does the CRII imply a change in co-financing rates?

The 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.

NL

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?

Article 30(5) CPR

Flexibility to transfer funds

The revised Article 30 of the CPR Regulation (Regulation (EU) No 1303/2013) will 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.

The Commission will apply all the flexibility allowed for within the current limits set by the CPR and the CRII.

As far as transfers between categories of regions is concerned, 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.

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.

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.

BE	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.
BE	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?
PL	Does the EC allow greater flexibility in transferring funds between categories of regions?
LT	Is it possible to transfer between the Funds - from ERDF, CF to priorities financed by ESF? What are the limits?
HR	Possibilities for reallocation of funds within the OP, proposed 8%/4%

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.

DE	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

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.

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.

UK	<p>Can the Commission consider a higher programme allocation threshold in this measure and a short-term derogation from the thematic concentration levels?</p> <p>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 because all other regulatory requirements will still need to be met, including PA thematic concentration levels.</p>
PL	<p>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.</p>
LT	<p>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?</p>
PL	<p>Will there be any changes in terms of thematic concentration?</p>
IT	<p>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?</p>

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).
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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?
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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.

DE	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

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.

EE	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?
PT	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?

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).

PL	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?
PT	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 ate the time of reprogramming proposal (instead of the 1st of February situation)

Change of co-financing rate

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.

EE	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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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 proposal COM(2020)113, 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.

BE	Can the Commission confirm that the use of the liquidity provision is compulsory? Or can we partially or totally refrain from using CRII?
FR	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?
DE	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.

FR	In this regard, can the Commission clarify the legal interpretation of paragraph 5
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	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. "?
DE	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.

FR	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?
DE	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?

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.

EE	<i>Does Article 37(4) CPR amendment allow also under the „working capital“ to ensure 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.</i>
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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.

CZ	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.
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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.

CZ	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).

Element of ex ante assessment required under Article 37(2)	How to address
<p>a) an analysis of market failures, suboptimal investment situations, and investment 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>It is sufficient to refer to refer to Commission’s communication ‘Coordinated economic response to the COVID-19 Outbreak’ 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 refer to Commission’s communication ‘Coordinated economic response to the COVID-19 Outbreak’ 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,</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>

Element of ex ante assessment required under Article 37(2)	How to address
d)	such differentiated treatment, such as a competitive or appropriately independent assessment process
e)	<p>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>This should be the focus of the analysis and could be prepared with 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</p>
f)	<p>the proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate</p> <p>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>
g)	<p>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>BG</p> <p>SI</p>	<p>Amendment of Article 3(1) of the ERDF Regulation to support pure working capital is part of the Commission proposals. What steps are needed in order to implement working capital for SMEs? Is an OP modification required or does this situation allow for quick deployment of measures and a subsequent OP modification? What</p>

HR	about the funding agreement / investment strategy ?
CZ	If we transfer financial resources to a financial instrument to support the working capital – do we need to run a new ex ante analysis ? (For the reply see sections 3 and 4.)
EE	The CPR requirement for ex-ante assessment of financial instruments has not been modified . Does this apply also in cases of working capital in a crisis context? If yes, please reconsider. (For the reply see sections 3 and 4.)
PL	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.)
PL	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.)
SI	Financial instruments: 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.)
SI	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)
DE	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?
HU	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)
IT	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)

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

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.

CZ	Either not to have to run SEA or to enable to provide SEA screening additionally.
SK	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.

NL	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)?
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FR	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?)
DE	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
MS	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.
FR	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?

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.

RO-HU ETC	<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"> -from the very beginning (when the crisis starts), or -the notification should be submitted at the end of the year, when clear data/figures will be available.
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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

NL	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?
LV	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.

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

MS	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.

BG	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.

BG	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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Is it possible to delay the execution of contracts under public procurement procedures and extend the deadlines for implementation?

This option is covered by Article 72 of Directive 2014/24/EU, more precisely Article 72(1)(c). In fact, this provision allows for the modification of contracts when such modification results from circumstances which the contracting authority could not foresee.

BG	Is it possible to delay the execution of contracts under public procurement procedures and extend the deadlines for implementation? Will be there some recommendations?
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Is it possible to apply public procurement rules more flexibly?

Public procurement Directives already allow for significant flexibility, including the possibilities to use accelerated procedures, direct award under very strict circumstances as well as contract modifications. The Commission refers you to its [Communication of 2015 on Public Procurement rules in connection with the current asylum crisis \(COM\(2015\) 454 final\)](#), whose principles also apply in the current crisis. In particular, the Coronavirus crisis may be considered as an extreme urgency situation falling into Article 32 (2) c) of Directive 2014/24/EU provided that all the conditions for its application are met.

BG	Is it possible to apply public procurement rules more flexibly?
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Public procurement - force majeure

Concerning Public Procurement rules, the Commission refers you to its [Communication of 2015 on Public Procurement rules in connection with the current asylum crisis \(COM\(2015\) 454 final\)](#), whose principles also apply in the current crisis. In particular, the Coronavirus crisis may be considered as an extreme urgency situation falling into Article 32 (2) c) of Directive 2014/24/EU provided that all the conditions for its application are met.

LT	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.
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SI	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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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).

LT	Could the contracting authority (beneficiary) benefit from Article 72, points (d) and
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(c) from paragraph 1 of Directive 2014/24/EU to change the following aspects in the agreement:

- 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;
- 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;
- 3) include, where justified, an advance payment if it was not provided for the initial agreement of purchase.

In these cases, could the contracting authority rely on Article 72, points (c) and (d) from paragraph 1 of Directive 2014/24/EU?

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

Article 125(5)(a) of the 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) 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. 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.

-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. As regards current audit work, the Italian audit authorities have received yesterday a letter through SFC2014 (reference

Ares(2020)1641010 of 18/3/2020) from the audit directors of EMPL and REGIO. 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.

IT	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.
UK	Will the Commission consider greater flexibility in terms of management and control systems? (practical implications i.e. travel restrictions)?
LT	force majeure regime and its implications on audits

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.

UK	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.

EL	However, having in mind that the time of “return to normality” is not foreseeable yet, 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.
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2. European Social Fund

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)

Short Time Work Schemes

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.

EE	<p>On the present scope of the ESF regulation we would ask confirmation that it is possible to grant:</p> <ul style="list-style-type: none"> · 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.
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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.

IT	Can the ESF provide financial support to self-employed, e.g. electricians or plumbers, who during the lockdown are not working?
PL	<p>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:</p> <ul style="list-style-type: none"> - 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). <p>In financial terms ESF input would come from TO 8 at national and regional levels.</p>

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).

IT	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)?
RO	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

	<p>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>
BG	<p>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).</p>
EE	<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 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>
RO	<p>Can we support health services aimed at this type of epidemic pathology, as well as expenses for temporary employment of medical staff?</p>

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^[1]) 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)^[2]. 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^[3] 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^[4].

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.

HR	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
MT	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
LT	Is it possible to transfer between the Funds - from ERDF, CF to priorities financed by ESF? What are the limits?

3. Fund for European Aid to the Most Deprived

- Created by [Nathalie COLLIN](#), last modified by [Louise REID yesterday at 2:25 PM](#)

Coronavirus Response Investment Initiative Plus (CRII +) Amendments to the FEAD Regulation

- The Commission has proposed on 2 April 2020 an amendment of the FEAD Regulation. 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 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. If the COM proposal is accepted, 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 higher co-financing (up to 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 or social inclusion 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 providing lighter monitoring, audit and control requirements during this period
- Above changes, if adopted, will 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, extended the scope of support of the Funds, providing immediate liquidity and giving flexibility in programme amendments.

- Press release:

<https://ec.europa.eu/social/main.jsp?langId=en&catId=1089&furtherNews=yes&newsId=9638>

- Legislative proposal: [https://eur-lex.europa.eu/legal-](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2020:141:FIN&qid=1585827604222&from=EN)

[content/EN/TXT/HTML/?uri=COM:2020:141:FIN&qid=1585827604222&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2020:141:FIN&qid=1585827604222&from=EN)

How can the FEAD help Member States to face the Coronavirus crisis?

- The Coronavirus outbreak presents an unprecedented challenge for the operations and delivery under the FEAD, in particular as the Coronavirus crisis presents specific risks to the most deprived. Therefore, specific measures should be taken in order 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.
- On 13 March 2020 the Commission launched its proposal on the Coronavirus Response Investment Initiative (CRII) proposing to amend the CPR and the ERDF Regulations to allow for combatting the coronavirus crisis.
https://ec.europa.eu/regional_policy/en/newsroom/news/2020/03/19-03-2020-eu-financial-support-for-national-regional-and-local-communities-fighting-coronavirus
- Support from the FEAD to buy protective material such as protective gloves, disinfection devices, protective shields, for those involved in the distribution of the food and having contact with the public can be provided under FEAD technical assistance (Article 27 (4)) thus without requiring Regulation change
- Support from the FEAD to buy protective material for the most deprived is already possible under the current Regulation (hygiene products can be bought under basic material assistance).
- However, the support to purchase medication or medical appliances is not possible under the FEAD as it does not fall within its scope. Member States who consider to buy medication or medical appliances, and/or implement health related social distancing measures, should do this under operations supported by the ESF.
- The purchase of medication and medical equipment to combat the Coronavirus crisis can be done under the ESF. If this would require an OP amendment, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak will be eligible as of 1.02.2020 ([COM\(2020\)113](#)).
- In view of the overall limited budget of FEAD, the ESF should be regarded as the fund from which principally the COVID 19 crisis response should be drawn from to provide additional support to the most deprived and to those distributing the food, in particular where the current flat rate for administrative costs and the 5% ceiling on FEAD Technical assistance for those measures eligible under FEAD would be exceeded.

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 under technical assistance (eg gloves, masks, disinfecting liquids etc.)**

These measures can be supported under 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).

IT	Can any of these measures already be funded under
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	the FEAD Regulation or is an amendment of the FEAD Regulation required?
LT	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.) from the technical assistance. The question is whether such expenditure could be treated as eligible?

Definition 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.

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
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	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?

4. European Regional Development Fund

- Created by [Nathalie COLLIN](#), last modified by [Tjasa ZUPAN](#) on [Apr 01, 2020](#)

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.

IT	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.

EE	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 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?
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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.
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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.

EL	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.

EL	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).

SE	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

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

EE	<p>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.</p> <p>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.</p> <p>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</p>
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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.

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.

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.

The requirements in the context of working capital under the proposed new subparagraphs 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.

IT	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.
IT	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;
IT	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.
SI	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.

EE Does working capital refer only to financial instruments or also non-refundable grants?

DE Does the financing of working capital include both financial instruments and grants?

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?

5. Cohesion Fund

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)

We will respond promptly to any question received.

6. European Maritime and Fisheries Fund

- Created by [Nathalie COLLIN](#), last modified on [Mar 31, 2020](#)

[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](#)

BE	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.

NL 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?

[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.

NL 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?

[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.

NL 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?

[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.

NL 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?

[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.

NL	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.

NL	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 on [Mar 31, 2020](#)

We will respond promptly to any question received.

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

FR	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.) ?
FR	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>

EE	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 on [Mar 31, 2020](#)

We will respond promptly to any question received.

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

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 will 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.

LT	When the renewed guidance on State aid will be disseminated?
BG	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

SI Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?

[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.

UK 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.

[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

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.

BG 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?

[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. 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

IT	<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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[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.

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.

PL	Will there be any changes in the manner of notification and acceptance of aid programs?
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[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.

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.

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).
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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 ?
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"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?
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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.

BE	<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. 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.

BG	<p>Consider increasing the de minimis threshold Regulation 1407/2013 and 1408/2013</p> <p>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</p> <p>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</p> <p>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</p> <p>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> <p>Directive 24/2014 and, respectively the local Public Procurement Law to allow an exception for selection of financial intermediaries without PPA procedure.</p>
PL	<p>SMEs: Are you considering raising the de minimis aid threshold for SMEs?</p>

[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.

FR	<p>Regarding State aid, can operating aid as part of the response to the health crisis be cumulated with</p>
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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.

SI	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 Regulation¹⁵) 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.

BG	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.

IT	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.

BE	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.
BG	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.