

III

(Preparatory acts)

COMMITTEE OF THE REGIONS

123RD PLENARY SESSION, 11-12 MAY 2017

Opinion of the European Committee of the Regions on the financial rules applicable to the general budget of the Union

(2017/C 306/12)

Rapporteur: Michiel Rijsberman (NL/ALDE), Regional Minister of the Province of Flevoland**Reference document:** Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council

COM(2016) 605 final

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Article 27

Modify paragraph 1

Text proposed by the Commission	CoR amendment
Any institution other than the Commission may, within its own section of the budget, transfer appropriations:	Any institution other than the Commission may, within its own section of the budget, transfer appropriations:
(a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;	(a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;
(b) from one chapter to another without limit.	(b) from one chapter to another without limit;
	(c) <i>from year n to year n+1 up to a maximum of 10 % of the total appropriations of the institution's budget to transfer unused appropriations from all budget lines to specific budget lines, which are meant to finance the institution's building projects as defined in Article 258 paragraph 5.</i>

Reason

In order to use all means available in the budget, unused appropriations should be allowed to be transferred to the following year for paying rent, loans for buildings or for maintenance of the institution's building (a definition of building projects can be found in Art. 258(5)).

Amendment 2

Article 39

Modify paragraph 3

Text proposed by the Commission	CoR amendment
<p>(...) The Commission shall attach to the draft budget</p> <p>(a) the reasons for which the draft budget contains different estimates from those drawn up by other institutions;</p> <p>(b) any working document it considers useful in connection with the establishment plans of the institutions. Any such working document, showing the latest authorised establishment plan, shall present:</p>	<p>(...) The Commission shall attach to the draft budget</p> <p>(a) a comparative table including the Commission's draft budget for the other institutions and the other institutions' original financial requests as sent to the European Commission;</p> <p>(b) the reasons for which the draft budget contains different estimates from those drawn up by other institutions;</p> <p>(c) any working document it considers useful in connection with the establishment plans of the institutions. Any such working document, showing the latest authorised establishment plan, shall present:</p> <p>(...)</p>

Reason

The issue raised in this amendment is important for the CoR as an institution. This amendment seeks to oblige the Commission to add to its proposal for the budget the original budget as adopted by the different institutions (e.g. CoR plenary) so that the unilateral changes made by the Commission become visible and transparent. This would increase the CoR's margin of negotiation with the Parliament and Council as part of the budgetary procedure.

Amendment 3

Article 123

Modify

Text proposed by the Commission	CoR amendment
<p>Article 123</p> <p>Cross-reliance on audits</p> <p>Where an audit is based on internationally accepted standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of the Union contribution, that audit shall form the basis of the overall assurance, as further specified, where appropriate, in sector specific rules.</p>	<p>Article 123</p> <p>Cross-reliance on audits</p> <p>Where an audit based on internationally accepted standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of the Union contribution, that audit shall form the basis of the overall assurance, as further specified, where appropriate, in sector specific rules. Information already available at the management authority should be used to the extent possible to avoid asking beneficiaries for the same information more than once.</p>

Reason

Excessive audit requirements lead to major risks for both regional administrations and SMEs. Simplification should reduce the audit burden for beneficiaries and limit audit to one audit authority only. First level of control instead of going back to the beneficiary and creating a control pyramid instead a control tower.

Amendment 4

Article 125

Modify

Text proposed by the Commission	CoR amendment
<p>Article 125</p> <p>Transfer of resources to instruments established under this Regulation or sector specific Regulations</p> <p>Resources allocated to Member States under shared implementation may, at their request, be transferred to instruments established under this Regulation or under sector specific Regulations. The Commission shall implement these resources in accordance with point (a) or (c) of Article 61(1), where possible for the benefit of the Member State concerned. In addition resources allocated to Member States under shared implementation may at their request be used to enhance the risk-bearing capacity of the EFSI. In such cases, EFSI rules shall apply.</p>	<p>Article 125</p> <p>Transfer of resources to instruments established under this Regulation or sector specific Regulations</p> <p>Resources allocated to Member States under shared implementation may, at their request and with the explicit consent of the local and regional authorities and Managing Authorities concerned, be transferred to instruments established under this Regulation or under sector specific Regulations. The Commission shall implement these resources in accordance with point (a) or (c) of Article 61(1), where possible for the benefit of the relevant areas (regions and/or local level) of the Member State concerned. In addition resources allocated to Member States under shared implementation may at their request be used to enhance the risk-bearing capacity of the EFSI. In such cases, EFSI rules shall apply.</p>

Reason

This addition brings Article 125 in line with amendment 6 of the CoR opinion on this point.

Amendment 5

Article 265

Modify paragraph 6

Text proposed by the Commission	CoR amendment
<p>The following Article 30a is inserted:</p> <p>'Article 30a</p> <p>1. Part of a Member State ESI Funds allocation may, at the request of that Member State and in agreement with the Commission, be transferred to one or several instruments established under the Financial Regulation or under sector specific Regulations or to enhance the risk-bearing capacity of the EFSI in accordance with Article 125 of the Financial Regulation. The request to transfer the ESI Funds allocation should be submitted by 30 September.</p>	<p>The following Article 30a is inserted:</p> <p>'Article 30a</p> <p>1. Part of a Member State ESI Funds allocation may, at the request of that Member State in accordance with Article 5(1) of this regulation, and in agreement with the Commission, be transferred to one or several instruments established under the Financial Regulation or under sector specific Regulations or to enhance the risk-bearing capacity of the EFSI in accordance with Article 125 of the Financial Regulation. Such a request can be made at the initiative of the local and regional authorities and Managing Authorities concerned. The request to transfer the ESI Funds allocation should be submitted by 30 September.</p>

Text proposed by the Commission	CoR amendment
<p>2. Only financial appropriations of future years in the financial plan of a programme may be transferred.</p> <p>3. The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments to the programme and to the partnership agreement shall be made in accordance with Article 30(2) which shall set out the total amount transferred for each relevant year to the Commission.'</p>	<p>2. Only financial appropriations of future years in the financial plan of a programme may be transferred.</p> <p>3. The request shall be accompanied by a proposal to amend the programme or programmes from which the transfer will be made. Corresponding amendments to the programme and to the partnership agreement shall be made in accordance with Article 30(2) which shall set out the total amount transferred for each relevant year to the Commission.</p> <p>4. The Commission shall verify and grant a transfer of resources only if the request submitted by the Member State is also supported and accepted by the local and regional authorities and Managing Authorities concerned.</p> <p>5. Part of one or several financial instruments established under the Financial Regulation or allocations under sector-specific Regulations or allocations to enhance risk-bearing capacity of the EFSI in accordance with Article 125 of the Financial Regulation may, under the same conditions as mentioned in paragraph one, be transferred to ESI Funds.'</p>

Reason

The CoR supports the call for more flexibility, but recognises the risk inherent to Article 30a, e.g. in terms of centralisation and subsidiarity. LRAs would therefore support the deletion of article 30a in the course of the trilogue. In the case Article 30a persists however, it is crucial to the CoR that LRAs and MAs are to give their express consent for any transfer of resources to be approved. Transfers should not be stimulated out of subsidiarity reasons and the need for structural investments.

Amendment 6

Article 265

Modify paragraph 13.2

Text proposed by the Commission	CoR amendment
<p>13. The following Article 39a is inserted:</p> <p>(...)</p> <p>2. The contribution referred to in paragraph 1 shall not exceed 25 % of the total support provided to final recipients. In the less developed regions referred to in point (b) of Article 120(3), the financial contribution may exceed 25 % where duly justified by the <i>ex ante</i> assessment, but shall not exceed 50 %. The total support referred to in this paragraph shall comprise the total amount of new loans and guaranteed loans as well as equity and quasi-equity investments provided to final recipients. The guaranteed loans referred to in this paragraph shall only be taken into account to the extent that ESI Funds resources are committed for guarantee contracts calculated on the basis of a prudent <i>ex ante</i> risk assessment covering a multiple amount of new loans.</p> <p>(...)</p>	<p>13. The following Article 39a is inserted:</p> <p>(...)</p> <p>2. The contribution referred to in paragraph 1 shall not exceed 25 % of the total support provided to final recipients. In the less developed and transition regions referred to in point (b) of Article 120(3), the financial contribution may exceed 25 % where duly justified by the <i>ex ante</i> assessment, but shall not exceed 50 %. The total support referred to in this paragraph shall comprise the total amount of new loans and guaranteed loans as well as equity and quasi-equity investments provided to final recipients. The guaranteed loans referred to in this paragraph shall only be taken into account to the extent that ESI Funds resources are committed for guarantee contracts calculated on the basis of a prudent <i>ex ante</i> risk assessment covering a multiple amount of new loans.</p> <p>(...)</p>

Reason

This measure in the Omnibus Regulation is designed to enable the use of Structural Fund resources to support EFSI Investment Platforms. This proposal extends the geographical scope of the additional flexibility to secure a contribution of ESIF of more than 25 % of the total support where it is justified by the *ex ante* assessment.

This will allow greater flexibility in the design of funds to reflect sectoral and local conditions, whilst retaining sufficient control over misuse of the flexibility through the requirement for any leverage over 25 % being justified by an *ex ante* assessment.

Amendment 7

Article 265

Modify paragraph 13.6

Text proposed by the Commission	CoR amendment
<p>13. The following Article 39a is inserted:</p> <p>(...)</p> <p>6. When implementing financial instruments under point (c) of Article 38(1), the bodies referred to in paragraph 2 of this article shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism, tax fraud and tax evasion. Those bodies shall not make use of or engage in tax avoidance structures, in particular aggressive tax planning schemes or practices not complying with tax good governance criteria as set out in EU legislation including Commission recommendations and communications or any formal notice by the latter. They shall not be established and, in relation to the implementation of the financial operations shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial operations. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial operations under such agreements.</p>	<p>13. The following Article 39a is inserted:</p> <p>(...)</p> <p>6. When implementing financial instruments under point (c) of Article 38(1), the bodies referred to in paragraph 2 of this article shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism, tax fraud and tax evasion. Those bodies shall not make use of or engage in tax avoidance structures, in particular aggressive tax planning schemes or practices not complying with tax good governance criteria as set out in EU legislation, Council conclusions or Commission recommendations and communications or any formal instruction issued by the Commission on that basis. They shall not be established and, in relation to the implementation of the financial operations shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial operations. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial operations under such agreements.</p>

Reason

The CoR feels that only binding legislation will provide the necessary legal certainty on tax avoidance provisions. Further to discussions between DG budget and the rapporteur, DG budget acknowledged the request of legal certainty by CoR and accepted to align the wording and use the term ‘formal instruction’.

Amendment 8

Article 265

Modify paragraph 16

Text proposed by the Commission	CoR amendment
<p>In Article 42, in paragraph 5, the first subparagraph is replaced by the following:</p> <p>(...)</p>	<p>Article 42 is amended as follows:</p> <p>(a) <i>in paragraph 3, the first subparagraph is replaced by the following:</i></p> <p><i>In the case of equity-based instruments targeting enterprises referred to in Article 37(4) for which the funding agreement referred to in point (b) of Article 38(7) was signed before 31 December 2018, which by the end of the eligibility period invested at least 55 % of the programme resources committed in the relevant funding agreement, a limited amount of payments for investments in final recipients to be made for a period not exceeding four years after the end of eligibility period may be considered as eligible expenditure, when paid into an escrow account specifically set up for that purpose, provided that State aid rules are complied with and that all of the conditions set out below are fulfilled.</i></p> <p>(b) <i>in paragraph 5, the first subparagraph is replaced by the following:</i></p> <p>(...)</p>

Reason

The only item that is proposed to change is 2017 (into 2018). In order to account for these financial instruments despite the end of eligibility period being end-2023, the CPR provided that under certain circumscribed conditions, monies may be earmarked for spending after closure, provided that the relevant funding agreement was entered into by 31 December 2017.

In light of the lead-time to the signature of funding agreements with fund managers, the deadline of end-2017 is considered as unattainable in practice, thereby discouraging a number of Managing Authorities from meaningfully steering their ESIF allocations towards addressing the particularly promising fields targeted by equity funds.

Strong market intelligence suggests that a considerable number of ESIF equity investments could be supported in Europe — with sizeable impacts on jobs and growth — if the deadline was prolonged to 31 December 2018, without amending any of the other parameters securing ESIF against the risk of ‘parking of funds’.

Amendment 9

Article 265

Modify paragraph 17

Text proposed by the Commission	CoR amendment
<p>17. The following Article 43a is inserted:</p> <p>‘Article 43a</p> <p>Differentiated treatment of investors</p> <p>1. Support from the ESI Funds to financial instruments invested in final recipients and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by those investments, which are attributable to the support from the ESI Funds, may be used for differentiated treatment of private investors, as well as the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. Such differentiated treatment shall be justified by the need to attract private counterpart resources.</p> <p>2. The need and the level of differentiated treatment as referred to in paragraph 1 shall be established in the ex ante assessment.</p> <p>(...)</p>	<p>17. The following Article 43a is inserted:</p> <p>‘Article 43a</p> <p>Differentiated treatment of investors</p> <p>1. Support from the ESI Funds to financial instruments invested in final recipients and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by those investments, which are attributable to the support from the ESI Funds, may be used for differentiated treatment of private investors, as well as the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. Such differentiated treatment shall be justified by the need to attract private counterpart resources. (...)</p>

Reason

This paragraph is redundant, as this is already stated in article 37, paragraph 2c: ‘Such *ex ante* assessment shall include [...] as appropriate an assessment of the need for, and level of, differentiated treatment to attract counterpart resources from private investors’. The paragraph should therefore be deleted.

Amendment 10

Article 265

Modify paragraph 24

Text proposed by the Commission	CoR amendment
<p>Article 61 is amended as follows:</p> <p>In paragraph 3, a new point (aa) is inserted after point (a):</p> <p>‘application of a flat rate net revenue percentage established by a Member State for a sector or sub-sector not covered under point (a). Before the application of the flat-rate the responsible audit authority shall satisfy itself that the flat-rate has been established according to a fair, equitable and verifiable method based on historical data or objective criteria.’</p>	<p>Article 61 is amended as follows:</p> <p>In paragraph 3, a new point (aa) is inserted after point (a):</p> <p>‘application of a flat rate net revenue percentage established by a Member State for a sector or sub-sector not covered under point (a). Before the application of the flat-rate the responsible managing authority — with the prior consent of the audit authority shall ensure that the flat-rate has been established according to a fair, equitable and verifiable method based on historical data or objective criteria.’</p>

Reason

There should be approval in advance of the flat rate (method), otherwise this provision doesn't provide any legal certainty.

Amendment 11

Article 265

Modify paragraph 26

Text proposed by the Commission	CoR amendment
26. Article 67 is amended as follows:	26. Article 67 is amended as follows:
(...)	(...)
(ii) point (e) is inserted:	(ii) point (e) is inserted:
(e) financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes. The detailed modalities concerning the financing conditions and their application shall be set out in delegated acts adopted in accordance with the empowerment provided for in paragraph 5.	(e) financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes. The detailed modalities concerning the financing conditions and their application, as well as the audit requirements , shall be set out in delegated acts adopted in accordance with the empowerment provided for in paragraph 5.

Reason

The inclusion of audit requirements in the delegated acts on performance budgeting will provide more legal assurance in advance.

Amendment 12

Article 265

Modify paragraph 27

Text proposed by the Commission	CoR amendment
27. Article 68 is replaced by the following:	27. Article 68 is replaced by the following:
'Article 68	'Article 68
Flat rate financing for indirect costs concerning grants and repayable assistance	Flat rate financing for indirect costs concerning grants and repayable assistance
Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:	Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:
(a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;	(a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;
(b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;	(b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;

Text proposed by the Commission	CoR amendment
<p>(c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.</p> <p>The Commission is empowered to adopt delegated acts in accordance with Article 149 concerning the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.;</p>	<p>(c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.</p> <p>The Commission is empowered to adopt delegated acts in accordance with Article 149 to supplement the definition of the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.;</p>

Reason

Legal certainty shall not be withdrawn by delegated acts.

Amendment 13

Article 265

Modify paragraph 28

Text proposed by the Commission	CoR amendment
<p>28. the following Articles 68a and 68b are inserted: (...)</p> <p>1. Direct staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation.</p>	<p>28. the following Articles 68a and 68b are inserted: (...)</p> <p>1. Direct staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation, without there being a requirement for the Member State to perform a calculation to determine the applicable rate.</p>

Reason

This is a real simplification and provides legal certainty.

Amendment 14

Article 265

Modify paragraph 52

Text proposed by the Commission	CoR amendment
<p>Article 127 is amended as follows:</p> <p>(a) in paragraph 1, third subparagraph, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'the second subparagraph of Article 62(5) of the Financial Regulation'.</p>	<p>Article 127 is amended as follows:</p> <p>(a) in paragraph 1, third subparagraph, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'the second subparagraph of Article 62(5) of the Financial Regulation'.</p> <p>(aa) to paragraph 1 is added:</p> <p>The principle of proportionality should be respected by keeping audits to a minimum.</p>

Text proposed by the Commission	CoR amendment
(b) in point (a) of paragraph 5, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'the second subparagraph of Article 62(5) of the Financial Regulation'.	(b) in point (a) of paragraph 5, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'the second subparagraph of Article 62(5) of the Financial Regulation'. (c) paragraph 7 is deleted.

Reason

The amount of audits should be limited to the minimum necessary to meet the requirements to reduce the control burden.

Amendment 15

Article 265

Add a new paragraph after paragraph 57

Text proposed by the Commission	CoR amendment
	in Article 142, to paragraph 1 b the following is added: 'and are above 5 % of the total amount of eligible costs that are in the payment request.'

Reason

This point was raised at the Stakeholders' meeting and rapporteur also received written input by stakeholders on this point by CPMR, LGA and Nouvelle-Aquitaine. The provisions regarding the suspension of payments should allow for more flexibility.

Amendment 16

Article 265

Modify paragraph 60

Text proposed by the Commission	CoR amendment
60. in Article 152, a new paragraph 4 is added: 'Where a call for proposal is launched prior to the entry into force of Regulation XXX/YYY amending the present Regulation the managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) may decide not to apply the obligation set out in Article 67(2a) for a maximum of 6 months starting from the date of entry into force of Regulation XXX/YYY . Where the document setting out the conditions for support is provided to the beneficiary within a period of 6 months starting from the date of entry into force of Regulation XXX/YYY the managing authority may decide not to apply those amended provisions.'	60. in Article 152, a new paragraph 4 is added: 'Where a call for proposal is launched prior to the entry into force of Regulation XXX/YYY amending the present Regulation the managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) may decide not to apply the obligation set out in Article 67(2a). Where the document setting out the conditions for support is provided to the beneficiary within a period of 6 months starting from the date of entry into force of Regulation XXX/YYY the managing authority may decide not to apply those amended provisions.'

Reason

This extension of the transition period for the introduction of new flat rates would allow the management authorities to better prepare (notably in terms of data analysis) in a more secure legal environment.

Amendment 17

Article 267

Add a new paragraph after paragraph 3

Text proposed by the Commission	CoR amendment
	<p><i>In the first paragraph of Article 11 of Regulation (EU) No 1305/2013, point (a) is replaced by the following:</i></p> <p><i>Amendment of rural development programmes</i></p> <p><i>Requests by Member States to amend programmes shall be approved in accordance with the following procedures:</i></p> <p><i>‘(a) The Commission shall decide, by means of implementing acts, on requests to amend programmes concerning an increase in the EAFRD contribution rate of one or more measures.’</i></p>

Reason

The main purpose of the proposal is to simplify management of the funds and ensure a degree of flexibility, whereas the Commission proposal tightens management and administrative rules for local and regional authorities. The text should therefore be amended.

Amendment 18

Article 267

Paragraph 7

Text proposed by the Commission	CoR amendment
<p>Article 36 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) <i>point (c) is replaced by the following:</i></p> <p><i>‘(c) an income stabilisation tool, in the form of financial contributions to mutual funds, providing compensation to farmers of all sectors for a severe drop in their income.’;</i></p> <p>(ii) the following point (d) is added:</p> <p><i>‘(d) an income stabilisation tool, in the form of financial contributions to mutual funds, providing compensation to farmers of a specific sector for a severe drop in their income.’;</i></p>	<p>Article 36 is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the following point (d) is added:</p> <p><i>‘(d) an income stabilisation tool, in the form of financial contributions to mutual funds, providing compensation to farmers of a specific sector for a severe drop in their income.’;</i></p>

Reason

Encouraging the use of risk management tools, especially insurance, does more to boost the insurance industry than to help farmers. Strengthening such instruments could undermine the rural development funds that are essential to the cohesion of rural areas.

Amendment 19

Article 267

Add a new paragraph after paragraph 7

Text proposed by the Commission	CoR amendment
	Article 37 of Regulation (EU) No 1305/2013 is deleted.

Reason

There is a risk that insurance instruments would use up all the available funds for rural development, and they are not an appropriate management tool for maintaining farmers' income. The United States is moving away from such methods.

Amendment 20

Article 269

Paragraph 2

Text proposed by the Commission	CoR amendment
'8. Member States may decide to stop applying the provisions of this Article from 2018. They shall notify the Commission of such a decision by 1 August 2017.'	

Reason

The amendment is intended to ensure that CAP funding continues to be targeted at active farmers as the only farmers eligible for direct payments, thus avoiding dispersion of financial resources.

Amendment 21

Article 269

Add a new paragraph after paragraph 3

Text proposed by the Commission	CoR amendment
	<p>Article 44(1) of Regulation (EU) No 1307/2013 is amended as follows:</p> <p>Crop diversification</p> <p>1. Where the arable land of the farmer covers between 10 and 30 hectares and is not entirely cultivated with crops under water for a significant part of the year or during a crop rotation, there shall be at least three different crops on that arable land. The main crop shall not cover more than 50 % of that arable land.</p> <p>Thanks to their positive impact on soil fertility and productivity, mixtures of clover and biennial grasses, or other types of intercropping and undersowing, can be incorporated into crop rotation.</p>

Reason

As well as simplifying the regime, the groundwork must be laid for reform of the CAP. Crop rotation is an essential part of this. [Regulation (EU) No 1307/2013].

Amendment 22

Article 270

Add a new paragraph after paragraph 3

Text proposed by the Commission	CoR amendment
	<p>3 d. In Article 152 the following paragraph is inserted:</p> <p>'1a. Notwithstanding the application of Article 101(1) TFEU, a producer organisation, which is recognised under paragraph 1 of this Article, may plan production, place on the market and negotiate contracts for the supply of the agricultural products, on behalf of its members for all or part of their total production.'</p>

Reason

To put Article 152 at the centre of SCMO's derogations from the application of competition law, in line with recommendation 157a of the AGRI market Task Force report and § 8 of the AGRI committee's opinion on the annual report on European competition policy.

Amendment 23

Article 270

Add a new paragraph after paragraph 3

Text proposed by the Commission	CoR amendment
	<p>3 k. In Regulation (EU) No 1308/2013, the following Article is inserted:</p> <p>'Article 152b</p> <p>Value-sharing</p> <p>Without prejudice to Article 125 concerning the sugar sector, producers of agricultural products in one of the specific sectors listed in Article 1(2), through their organisations, and undertakings marketing or processing such products may agree on value-sharing clauses, including market bonuses and losses, determining how any evolution of relevant market prices or other commodity markets is to be allocated between them.'</p>

Reason

The aim is to allow producers of agricultural products to agree, through their organisations, on value-sharing clauses with undertakings marketing or processing their products, following the model of the sugar sector.

Amendment 24

Article 270

Add a new paragraph after paragraph 3

Text proposed by the Commission	CoR amendment
	<p>3 z. In Title II of Regulation (EU) No 1308/2013, a new Chapter is added:</p> <p>‘CHAPTER IIIa</p> <p>Relations with the supply chain</p> <p>Article 175a</p> <p>Unfair trading practices</p> <p>Before 30 June 2018, the European Commission shall propose to the European Parliament and to the Council a legislative proposal on a Union-level framework to combat practices that grossly deviate from good commercial practice and are contrary to good faith and fair treatment in transactions between farmers, including their organisations and processing SMEs, and their trading partners downstream of the supply chain;’</p>

Reason

This would require the Commission to adopt, before mid-2018, a European legislative framework to combat unfair trading practices, in line with the European Parliament’s position of 12 December 2016 and with recommendation 113 of the AGRI market Task Force report.

Amendment 25

Article 270

Add a new paragraph after paragraph 4

Text proposed by the Commission	CoR amendment
	<p>4 c. In Article 219(1), the fourth subparagraph is replaced by the following:</p> <p>‘Such measures may to the extent and for the time necessary to address the market disturbance or threat thereof extend or modify the scope, duration or other aspects of other measures provided for under this Regulation, or provide for export refunds, suspend import duties in whole or in part including for certain quantities or periods as necessary or propose any appropriate supply management measures.’</p>

Reason

To enhance the effectiveness of Article 219, it is appropriate to enable the Commission to use all means at its disposal under Regulation (EU) No 1308/2013 but also any other appropriate supply management measures.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR)

1. notes that the Financial Regulation sets out the principles and procedures governing the implementation of all areas of the EU budget and the control of EU funds and programmes. The proposal thus includes all types of EU spending, ranging from blending instruments such as the European Fund for Strategic Investments (EFSI), to shared management such as the European Structural and Investment Funds (ESIF) and centrally managed EU programmes such as Horizon 2020. The EU's Financial Regulation also covers the administrative costs of the EU institutions, and the CoR, as a body of the EU, is also bound by its application;

2. suggests that with a revision of this size — where 15 legislative acts are to be modified — an impact assessment should be carried out prior to the presentation of the proposal. This impact assessment should take into consideration the territorial dimension and impact of proposals made. It is now difficult to assess the proposal's repercussions for Local and Regional Authorities and its compliance with the proportionality principle; Moreover, the CoR questions the European Commission's assessment that the legislative proposal falls under the exclusive competence of the Union given that the proposals on the sectoral legislative acts go beyond aligning the text with the new financial rules applicable to the Union;

3. stresses that local and regional authorities have repeatedly called for simpler and more flexible rules to speed up the implementation of EU funds and make the day-to-day running of operations easier for their beneficiaries, notably for small and medium-sized enterprises (SMEs), and management authorities;

4. welcomes that, as a result of the good cooperation between the CoR and the European Commission, a number of simplification proposals which were drawn up during the joint workshops co-organised with the Presidency of the Council on the simplification of cohesion policy found their way into the legislative proposal, such as the move towards a more performance based approach to payment by the Commission;

5. welcomes the widening of options to use simplified costs, but points out that there are aspects of this that could be improved, recommending that the simplified costs option be extended for projects involving Services of General Economic Interest (SGEIs), as with projects subject to State aid rules. Moreover, use of standard scales should not be subject to approval in advance by the European Commission or should at least be limited so as to allow managing authorities to make significant simplifications in management;

6. notes that the suggested simplification measures concerning audits are expected to lead to significant simplification in all EU policy areas which involve EU spending. The proposals in the Financial Regulation on performance budgeting, combined with the simplification and cross reliance (single audit), make considerable progress possible in terms of reducing the number of audits, errors and administrative burdens and strengthening the image, use and targeting of results. The aim of cross reliance measures is to encourage reliance as far as possible on one single audit when the audit is reliable according to internationally accepted auditing standards;

7. regrets that not all simplification proposals on audit found their way into the legislative proposal. Excessive audit requirements lead to major risks for both regional administrations and SMEs. Consequently, many think that ESIF support simply is not worth the effort. Further simplification should ease the burden for beneficiaries. The proposal for cross reliance by audit authorities regarding management verifications by managing authorities should be considered in this respect and include the first level of control instead of going back to the beneficiary;

8. calls for a lighter approach and greater transparency in relation to audit requirements, recommending for instance a shorter record-keeping period for digital records given that the cost of digital data storage may be as much as the current cost of keeping physical records;

9. recommends introducing the possibility of a tailor made audit strategy for an operational programme, based on methods and principles that audit authorities have to use in Member States, such as proportionality principles, rewarding good results on previous audits and the use of national audit methods;

10. welcomes the proposal in the Financial Regulation that financing not be linked to the costs of the relevant operations but is instead based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes. Suggests that wider use of performance budgeting should be encouraged;

11. is pleased that its request to allow for the direct award of contracts to national/regional public development financial institutions when acting as a financial intermediary in the implementation of financial instruments is envisaged in the legislative proposal;

12. welcomes the proposed simplification of Joint Action Plans (JAPs) but notes that JAPs have hardly been used so far, because managing authorities were afraid that auditors would interpret the rules on JAPs differently, and impose financial corrections. Moreover, the use of JAPs requires extra layers of governance. Suggests therefore, investigating the experiences with the use of JAPs and an evaluation of the delivery mechanism; Requests information on what practical steps have been taken by the European Commission to address the lack of trust and uncertainty. Requests the European Commission to provide a model JAP, on which the Commission should seek the advice of the European Court of Auditors; Strongly suggests that a number of pilots are already launched across all Member States during this period as to form a testbed for JAPs to be widely used post 2020;

13. welcomes that the proposals to improve the combination of ESIF and EFSI (articles 38(1)(c) and 39(a) of the Common Provisions Regulation on the ESI Funds, or CPR), especially concerning financial instruments, seem to be very positive and appear to answer the requests made by the Committee of the Regions for more synergies between ESIF and EFSI. However, there are still some doubts about the added value of having two delivery mechanisms for revolving funds, which can be implemented through both EFSI and ESI Funds. The administrative burden of having two delivery mechanisms can be avoided by an *ex ante* evaluation of the combined implementation of ESIF and EFSI, on a case by case basis. The CoR also draws attention to the fact that in comparison with ESI Funds, the implementation of EFSI, and the conditions attached, are considered simpler. The different status of directly managed EU funds, such as EFSI and Horizon 2020, and of the shared managed ESI Funds with respect to state aid increases administrative burden and impedes synergies between the tools;

14. regrets that the legislative proposal opens the possibility of shifting resources from cohesion policy to other centrally managed programmes or to increase the risk-bearing capacity of the European Fund for Strategic Investments (EFSI). From a local and regional standpoint this appears to be problematic, given that the request for such a transfer has to be made by the Member State without the explicit need to consult local and regional authorities. Therefore local and regional authorities reject this proposal as it is tabled now, therefore the CoR proposes that the Commission shall verify and grant a transfer of resources only if the request is initiated and/or approved by the managing authority or the local and regional authorities concerned. The local and regional authorities should be able to initiate such a request;

15. recommends that the legislative proposal should also open the possibility of shifting resources from centrally managed programmes and EFSI to cohesion policy. These points are addressed in Amendment 1;

16. underlines that many causes of complexity can be found within delegated and implementing acts, as well as in the Commission's guidelines. A large number of additional requirements and issues relating to management, audit and oversight actually result from this secondary regulation, and it is necessary to simplify it;

17. notes that Article 27(2) of Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 establishes retroactive effect at the time of checks and audits of operations, giving rise to unacceptable legal uncertainty for beneficiaries. This principle of retroactive effect should be removed, unless the latter are more favourable to beneficiaries;

Simplification proposals for the programming period post-2020

18. requests that the simplification of cohesion policy should be continued with the proposals for the programming period post-2020. In this respect, the following issues should be resolved as a priority:

- Establish a level playing field for different funding instruments of the EU by having common definitions to be able to compare results and combine funds.

- Explore how *ex ante* conditionalities of cohesion policy (Art. 19 CPR) could lead to further simplification.
- Reconsider the multi-level approach in shared implementation programmes, it would be more efficient to deal with either the regional/local authorities or with the national authority depending on the geographical scope of the programme.
- In order to increase transparency and make the legislation less complex, under the various ESI funds identical rules should apply. This can be done by developing a one-stop-shop for applications of beneficiaries of ESIF to make easy and equal access possible.
- Limit conditions to this general single set of rules. The financial rules should not allow for extra conditions concerning fund specific rules on audits and eligibility of costs for specific funds and programmes. Fund specific regulations should be restricted to rules about programme content and reporting. This prevention of gold plating should also apply to all partners in shared implementation programmes.
- Limit the content of annual implementation reports to providing key information on the implementation of the programme without placing unnecessary extra burden on the managing authorities.
- Abolish bureaucratic procedures, that have limited additional value and which are implemented totally differently, such as the designation procedure (Art. 124 CPR).
- Develop differentiated audit and reporting through contracts of confidence between the EU and the national audit and managing authorities.
- To prevent burden of control the Article on the Functions of the Audit Authority (Art. 127 CPR) should be complemented with: ‘This audit strategy is clarified in advance to the Managing Authority and is judged by the Commission to protect the principle of proportionality and take into account the risks of the specific operational programme’.
- To take as an example of the 2007-2013 programme period *ex ante* assessment and designation procedure, under which the Commission checked and validated all systems put in place by managing authorities, to ensure that funding can be delivered quicker at the start of the programming period.
- The provisions regarding the suspension of payments (Art. 142 CPR) should allow for more flexibility.
- A distinction should be made between fraudulent errors and unintentional errors.
- Greater trust should be developed between those involved in shared management of the ESI funds and the European Commission.
- Article 28 of Regulation (EU) No 480/2014 refers to a 2 % maximum materiality level. Experience shows that such a level is not appropriate in the context of cohesion policy projects. Since international auditing standards do not impose numerical requirements, it should be possible to raise this threshold to 5 %;

19. underlines that the legislative proposal on ‘the financial rules applicable to the general budget of the Union’ accompanied by corresponding sectoral rules set out in 15 legislative acts relates to all CoR Commissions, which have been consulted during the preparatory phase of this opinion. The COTER working group on the EU Budget has also contributed to the drafting of this opinion.

Brussels, 11 May 2017.

The President
of the European Committee of the Regions
Markku MARKKULA
