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2017/0336 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 as regards support to structural reforms in Member States

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Appropriate national policies are essential for the smooth functioning of a more integrated Economic and Monetary Union. Since many critical policy areas that are decisive remain primarily in the hands of the Member States, their coordination and the sequencing of reforms is essential to maximise their effectiveness, not only at national level, but also at EU level.

Under the post-2020 Multiannual Financial Framework, the Commission intends to propose a new reform delivery tool for Member States committing to reforms discussed at EU level and agreed in so-called 'reform commitments'. It would have its own budgetary endowment, separate from and in addition to the European Structural and Investment Funds, which would retain their own set of rules and conditionalities.

The European Semester should remain the core vehicle for further steps towards stronger convergence and more effective coordination of such policies. This new tool should be set up with a view to support Member States in implementing structural reforms identified in the European Semester process, and ensure Member State ownership of these reforms.

This new reform delivery tool would seek to support a broad range of reforms. The focus should be on those reforms which can contribute most to the resilience of domestic economies and have positive spill-over effects on other Member States. These include reforms in product and labour markets, tax reforms, the development of capital markets, reforms to improve the business environment as well as investment in human capital and public administration reforms.

The Commission intends to test the main features of this reform delivery tool in a pilot phase for the period 2018-2020, by offering the possibility to Member States to use all or part of the performance reserve in the current European Structural and Investment (ESI) Funds to support reforms instead of specific projects. To this end, the Commission proposes amendments to the Regulation (EU) 1303/2013 (Common Provisions Regulation) accordingly.

It should be recalled that a link between the European Semester priorities and the Union budget has already been established for the programming period 2014-2020, notably by introducing ex-ante and macro-economic conditionalities for the European Structural and Investment Funds.

Under today's proposal, such a link is further strengthened by allowing Member States to use all or part of the performance reserve set up in Articles 20 – 22 of the Common Provisions Regulation for cohesion policy to support structural reforms.

The reforms to be supported would be identified in multiannual reform commitment packages presented and monitored through the National Reform Programmes. The reform commitments would be defined by the Member States themselves and would include a set of reform measures with clear milestones and targets.

The Commission would then adopt a decision, by means of an implementing act, setting out these reform commitments and the amount allocated from the performance reserve for their support. This amount would be proportionate to the nature and importance of the reform. The monitoring and reporting on the implementation of its different milestones would be part of the European Semester. National Reform Programmes would be the source of information on progress and should provide information on steps towards reform completion.

The annual Country Reports produced by the Commission's services as part of the European Semester would provide an updated assessment of the reform progress, on the basis of which the award of support under this tool will be decided by the Commission. Support would be paid in full once the Member State has fully implemented the reform commitment.

- **Consistency with existing policy provisions in the policy area**

The proposal is consistent with the overall legal framework established for the European Structural and Investment Funds and is limited to a targeted amendment of the Common Provisions Regulation.

- **Consistency with other Union policies**

The proposal is limited to a targeted amendment of the Common Provisions Regulation and maintains consistency with other Union policies. The new structural support instrument would be complementary to the voluntary technical support provided via the Structural Reform Support Programme (SRSP). The reform commitments could also include areas for which technical support from the SRSP would be requested from the Commission. Request for such technical support would remain voluntary.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

The Common Provisions Regulation defines the common rules applicable to the European Structural and Investment Funds . Based on the principle of shared management between the Commission and the Member States, this Regulation includes provisions for the programming process as well as arrangements for programme (including financial) management, monitoring, financial control and evaluation of projects.

The proposal creates an option for Member States to allocate the performance reserve referred to in Articles 20 to 22 to structural reform support on the basis of reform commitments, and defines the mechanisms for implementing reform commitments.

Subsidiarity (for non-exclusive competence)

The proposal complies within the subsidiarity principle to the extent that it provides continued increased support through cohesion policy for certain Member States which opt for the use of the performance reserve for structural reform support. This mechanisms needs to be established at European level.

Proportionality

The proposal is a limited and targeted change not going beyond what is necessary to achieve the objective of providing support to reforms in Member States.

Choice of the instrument

Proposed instrument: amendment of the current regulation.

The Commission has explored the scope for manoeuvre provided by the legal framework and considers it necessary, in the light of experience, to propose modifications to Regulation (EU) 1303/2013.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Ex-post evaluations/fitness checks of existing legislation

There was no ex-post evaluation/or fitness checks of the existing legislation.

Stakeholder consultations

There was no consultation of external stakeholders

Collection and use of expertise

Use of external expertise has not been necessary.

Impact assessment

n/a

Regulatory fitness and simplification

This is not an initiative within the Regulatory Fitness Programme (REFIT).

Fundamental rights

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

There is no impact on commitment appropriations since no modification is proposed to the maximum amounts of European Structural and Investment Funds financing provided for in the operational programmes for the programming period 2014-2020. It should be noted that the proposed modification does not imply any changes in the Multiannual Financial Framework annual ceilings for commitments and payments, which are set out in Annex I of Regulation (EU) No 1311/2013.

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

Not applicable. The existing delivery systems for direct management of the European Structural and Investment Funds can be used to monitor the implementation of this proposal.

Explanatory documents (for directives)

Not applicable

Detailed explanation of the specific provisions of the proposal

Article 1 will be modified to explain that the Common Provisions Regulation also covers support to structural reforms identified in the European Semester process. The term 'structural reform' is clarified in a dedicated definition included in Article 2.

Article 4(7) is modified to clarify that the structural reform support will not fall under shared management, but under direct management (financing not linked to cost as set out in Article 121(1)(e) of the revised Financial Regulation), and not require national co-financing.

In Article 15, a new point is added to explain that the partnership agreements also need to contain information on the re-allocation of the performance reserve to structural reform support.

Article 22 of Regulation (EU) No 1303/2013 is proposed to be be modified to allow Member States to allocate the performance reserve partially or fully to any of the following:

a. to programmes and priorities which have achieved their milestones in accordance with paragraphs two to seven under the existing performance framework,

b. to support for structural reforms

The modalities for requesting structural reform support are included in a new paragraph 8 in Article 22.

A new funding mechanism for support to structural reforms in the form of financing not linked to cost is proposed in Article 23a of this Regulation. It contains the rules for establishing reform commitments and the conditions for the disbursement of the support to Member States once the agreed reform commitments are met.

The amendment to Article 91 clarifies that all or part of the performance reserve which is included in the overall amounts for the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund may be allocated to support for structural reforms as referred to in Article 23a.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the third paragraph of Article 175 and Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee[1],

After consulting the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Since the economic governance of the Union contributes to economic, social and territorial cohesion, it should be possible to support reform commitments undertaken by Member States to implement relevant Council recommendations or to maximise the growth and competitiveness impact of the cohesion policy funds as a specific form of support implemented in direct management.

(2) In order to facilitate reforms conducted by the Member States in the context of the economic governance process, it is necessary to open the possibility to partially or fully allocate the performance reserve set up by Article 20 of the Regulation (EU) 1303/2013[3] to support reform commitments undertaken by the Member States.

(3) Any reallocation from the performance reserve should be subject to the fulfilment of commitments with respect to implementing reforms identified in the European Semester process. Priority should be given for the implementation of structural reforms which are expected to contribute most to the resilience of domestic economies and have positive spill-over effects on other Member States. These include reforms in product and labour markets, tax reforms, the development of capital markets, reforms to improve the business environment as well as investment in human capital and public administration reforms.

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1 OJ C, , p. .

2 OJ C , , p. .

3 OJ L 347, 20.12.2013, p.320

(4) It is appropriate that Member States propose a detailed set of measures for the implementation of the structural reforms which should contain milestones and targets and a timetable of not more than three years

(5) Support to reform commitments should take the form of financing not linked to cost referred to in Article 121(1)(e) of Regulation (EU) … [Revised Financial Regulation] under direct management. The amount allocated to the implementation of the structural reforms should be proportionate to the nature and importance of the reform and should complement existing Union support to national reforms.

(6) The procedure for the establishment of such commitments, their content and the provisions applicable to this specific form of support should be defined.

(7) In order to allow for the prompt application of the measures provided for in this Regulation, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(8) Therefore, Regulation (EU) No 1303/2013 should be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1303/2013 is amended as follows:

1. In Article 1 the first paragraph is replaced by the following:

"This Regulation lays down the common rules applicable to the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF), which operate under a common framework (the 'European Structural and Investment Funds' - 'ESI Funds'). It also lays down the provisions necessary to ensure the effectiveness of the European Structural and Investment Funds and their coordination with one another and with other Union instruments**, and the rules for the use of the performance reserve to support structural reforms identified in the European Semester process.** The common rules applying to the European Structural and Investment Funds are set out in Part Two. **The rules applying to the partial or full use of the performance reserve to support structural reforms are laid down in Article 23a."**

2. In Article 2, point 40 is inserted:

"'structural reforms' mean reforms identified in the European Semester process in accordance with Article 2-a of Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies."

3. In Article 4, paragraph (7) shall be replaced by the following:

"7. The part of the budget of the Union allocated to the European Structural and Investment Funds shall be implemented within the framework of shared management between the Member States and the Commission, in accordance with Article 62 of the Financial Regulation, with the exception of the amount of support from the

Cohesion Fund transferred to the Connecting Europe Facility referred to in Article 92(6) of this Regulation, innovative actions at the initiative of the Commission under Article 8 of the ERDF Regulation, technical assistance at the initiative of the Commission, the support for direct management under the EMFF Regulation **and the use of the performance reserve for the Funds to support structural reforms in accordance with Article 23a**."

4. In Article 15, a point (viii) is added to paragraph (1) point (a):

"(viii) information on the re-allocation of the performance reserve used in accordance with Article 22(1a) point b),"

5. In Article 20 the first paragraph shall be replaced by the following:

"6 % of the resources allocated to the ERDF, ESF and the Cohesion Fund under the Investment for Growth and Jobs goal referred to in point (a) of Article 89(2) of this Regulation, as well as to the EAFRD and to measures financed under shared management in accordance with the EMFF Regulation shall constitute a performance reserve which shall be established in the Partnership Agreement and programmes and **either** allocated to specific priorities **or, for the ERDF, ESF and Cohesion Fund, support structural reforms** in accordance with Article 22 of this Regulation."

6. In Article 22, the following paragraph (1a) is added:

"1a. A Member State may decide to partially or fully use the performance reserve for either:

(a) programmes and priorities which have achieved their milestones in accordance with paragraphs 2 to 7;

(b) support for structural reforms, on the basis of reform commitments implemented in accordance with paragraph 8 and Article 23a.

In Article 22, the following paragraph (8) is added:

"8. The decision of a Member State to use parts of or the full performance reserve to support structural reforms pursuant to paragraph (1a) shall be accompanied by a proposal to undertake reform commitments pursuant to Article 23a, and a proposal to re-allocate all or part of the performance reserve in submitting an amendment in accordance with Articles 16(4) and 30(3)."

7. A new Article 23a is added:

"Support to structural reforms on the basis of reform commitments in the European Semester process"

1. A Member State which opts for a partial or full allocation of the performance reserve under point (b) of Article 22(1a) shall propose to the Commission a detailed set of measures appropriate for the implementation of structural reforms in accordance with Union law. This proposal shall include reform commitments which shall contain milestones and targets for the implementation of the reform measures and a timetable which shall not be longer than three years.

2. The Commission shall assess the proposal. It may make observations or seek additional information. The Member State concerned shall provide the requested additional information and revise the reform commitments if requested to do so.

3. The Commission shall adopt a decision, by means of an implementing act, setting out the reform commitments to be implemented by the Member State and the amount allocated from the performance reserve for their support. This amount shall be proportionate to the nature and importance of the reform and complement other measures or operations supported from Union funds.

4. Support to structural reforms by Member States under this Article shall take the form of a financing not linked to cost referred to in Article 121 (1)(e) of the Financial Regulation, shall be managed in line with the rules for direct management set out in that Regulation, and shall not require national co-financing. Chapter I of Title II, and Titles III to IX of Part Two of this Regulation do not apply.

5. The decision referred to in paragraph 3 shall lay down that the support is paid in full once the Member State has fully implemented the reform commitment.

6. The Member State shall regularly report within the mechanisms of the European Semester on the progress in the achievement of the reform commitment. The modalities and timetable of the reporting shall be laid down in the decision referred to in paragraph 4.

8. In Article 91, the following paragraph is added:

"4. All or part of the performance reserve which is included in the amounts set out in Articles 91 and 92 may be allocated to support for structural reforms as referred to in Article 23a on request of a Member State under Article 22(8)."

Article 2

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*