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Position of the European Association Public Banks (EAPB) On the legislative proposals governing the EU Cohesion Policy in the Multiannual Financial Framework 2021–2027

The European Association of Public Banks (EAPB) represents the interests of 31 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 93 public financial institutions. A large part of EAPB members, most notably the national and regional promotional banks, play a key role in the implementation of the EU financial instruments as well as the European Structural and Investment Funds (ESIF).

The promotional banks undertake funding activities, pursuing the governmental economic policies. They are not only experienced with the execution of ESIF, but as specialist credit institutions hold a great expertise in different European and national financial instruments. Thanks to their knowledge of the local economies and markets, the public promotional banks are key partners for the national governments and the European Union in designing all promotional financial instruments.

The purpose of this Position Paper is to provide input as to the legislative proposals governing the EU Cohesion Policy in the Multiannual Financial Framework 2021 – 2027.

This paper consists of the following parts:

I. General Remarks

II. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council regulation laying down common provisions for the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument - **COM(2018) 375**

III. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council regulation on the European Regional Development Fund and on the Cohesion Fund **- COM(2018) 372**

IV. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+) - **COM(2018)382**

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

I. General remarks

The EU Commission published the above-mentioned proposals in May/June 2018. We welcome this early submission of the regulation texts very much. The EU Commission clearly recognises the necessity of shaping the EU Cohesion Policy at a stage as early as possible before the beginning of the next funding period.

With its proposal for the new legislative package for the funding period 2021–2027 the EU Commission's aims at a framework which is "modern, flexible and simplified".

A simplification in this sense would be the discontinuation of a renewed designation, provided a functioning administrative and monitoring system was set up in the expired programme period.

The audit requirements for the management and control system may also be limited, provided the tolerance levels for errors have not been transgressed for two years in a row.

Furthermore, the principle of a single audit is to be introduced. We would also like to positively highlight the stronger recourse to national management systems in the case of lower risk programmes, the increased utilisation of simplified cost options and the abolition of the rules for net incomes during and after completion of the operations.

In addition, wide-reaching options for greater flexibility are to be created in which the national rules of the Member States are the standard for the supervision of parameters and there is the possibility of a flexible configuration of the individual programme regions of a Member State.

We expressly welcome the examples of simplification and increased flexibility specified. However, we must point out that these simplification approaches should not be counteracted by multiple delegated or implementing acts or guidelines of the EU Commission. With 112 articles in the regulation text and 22 annexes for the Common Provisions Regulation alone, the proposed rules are still very extensive and place considerable demands on the implementation of the funding programmes.

Further simplification resulting from taking over processes and identical rules from the current funding period arises only in a few points. Therefore, we cannot assume it will be a comprehensive roll-over of a well-practised procedure.

The EU Commission's suggestion to remove the EAFRD from the Common Provisions Regulation again and to administer this in a separate legal framework is incomprehensible. Even if in some places the EAFRD Regulation refers to the rules of the Common Provisions Regulation, in our opinion, this gives rise to a loss of synergy effects in the management of the Funds and a lack of understanding as regards the avoidable increase in bureaucracy.

Likewise, we are critical of the restriction to five policy fields in comparison to the previous eleven thematic objectives in the current funding period. This leads to a considerable restriction in the scope of action of EU Cohesion Policy at a regional level, especially in combination with the reduction of the EU co-financing rates at the same time. Altogether, this neither takes into account the idea of cohesion, partnership and shared managing of resources nor subsidiarity and is likely to significantly narrow the success of the EU Cohesion Policy in achieving "European added value".

A central problem is a considerable investment bottleneck in the area of infrastructure. In this sense, it is incomprehensible why funding – e.g. for the broadband network – is again not taken into consideration as a part of the Cohesion Policy funding. In regions with larger and smaller municipal agglomerations, urban development policy is furthermore an equally important regional development policy component. We therefore regret that the

proposals of the EU Commission are restricted merely to “local initiatives” for urban development. This will not be sufficient to meet the multiple challenges in the cities. Against this background, the more restrictive specifications in relation to the funding eligibility of land acquisitions should also be viewed critically.

The EU Commission claims that financial instruments in the EU Cohesion Policy have an especially high potential to achieve more with less resources – especially as reflows of resources can generally be expected from financial instruments, unlike in the case of grants. However, stricter requirements being set for the utilisation of financial instruments than for grants in the future funding period contradicts this.

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

II. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council regulation laying down common provisions for the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument.

Article 2: Definitions

For better user-friendliness, we suggest listing the definitions in alphabetical order.

No 5: "priority"

The definition "priority" refers solely to AMIF, ISF, BMVI and EMFF. This could allow the conclusion that no priorities are given for the rest of the Funds. Therefore, we suggest the following extension to the phrasing:

"(5) "priority" a political objective as defined within Article 4, Paragraph 1 in the context of the AMIF, the ISF and the BMVI, means a "specific objective", as defined within Article 4, Paragraph 1,; in the context of the EMFF it means a "type of areas of support", as referred to in the nomenclature laid down in Annex III of the EMFF Regulation;"

No 6: "specific objective"

The definition refers solely to the EMFF. It should be extended in the same way as the definition for priority to include the ERDF and ESF+.

"(6) "specific objective" in the context of the EMFF, shall be understood as "areas of support" as referred to in Annex III of the EMFF Regulation; in the context of the ERDF, objectives according to Article 2 of the ERDF Regulation, in the context of the ESF+, objectives according to Article 4 of the ESF+ Regulation;"

No 8: "beneficiary"

We expressly welcome that in the next funding period, natural persons can also fully benefit from funding from the Structural Funds.

No 33: "completed operation"

This definition has been taken over from the current funding period, unchanged. Practical experience however shows that the definition can be problematic, especially in the R&D&I area. In innovation funding, in particular, there is a certain implementation risk. This is countered by milestones to be fulfilled, in the approval. If it emerges during the course of the project, that further implementation does not make sense because a milestone (objective) cannot be achieved, the project is ended. These cases are thereby not "completely carried out" but are also not revoked because of this. This should be taken into account in the definition which so far seems to have been directed more towards investments. Against this background, the definition could be extended as follows:

"(33) "completed operation" an operation that has been physically completed or fully implemented and in respect of which all related payments have been paid by beneficiaries and the corresponding public contribution has been paid to the beneficiaries; for R&D&I area due to its specificities, an operation can be regarded as completed based on the resolution of official authority, if the project has not been fully implemented for the R&D&I area, due to the

non-achievement of projected objectives, while payments related to such operation up to that moment have been paid by beneficiaries and the corresponding public contribution has been paid to the beneficiaries."

Article 5: Shared management

Paragraph 1

In the text of the proposal, it is not evident to what extent programmes can be created at the regional level in federally organised Member States. Even if according to the statements of the EU Commission no centrally operational programmes are desired, the following addition should be incorporated for clarity, based on Article 4 Paragraph 4 of Regulation (EU) No 1303/2013:

"(1) The Member States – at the appropriate territorial level and according to their institutional, legal and financial frameworks and the authorities named by them for this purpose – and the Commission shall implement the budget of the Union allocated to the Funds under shared management in accordance with Article [63] of Regulation (EU, Euratom) [number of the new financial regulation] (the 'Financial Regulation')."

Article 14: Mid-term review

and

Article 17: Content of programmes

In our opinion, the proposal of the EU Commission to plan the financial resources of the Funds initially only up to 2025 and to allocate the rest of the resources for the years 2026 and 2027 only after a mid-term review in 2024 following revision of the programmes will lead to incalculable uncertainties. The funding period is artificially divided into two even shorter periods. Especially in the case of operations which are planned for an entire funding period, but must be interrupted for budgetary reasons, the EU Commission's proposal will lead to a lack of planning certainty for all parties involved.

Against this background, we plead in favour of the complete retention of the 7-year planning period.

Article 19: Amendment of programmes

Paragraph 5

We rate the newly created option of transferring the resources from one fund to another fund positively in view of the flexibility with regard to resource management.

Article 20: Joint support from the ERDF, the ESF+ and the Cohesion Fund

The interlocking between the Funds is improved through the possibility of joint support for single operations from several Funds. We view this flexible approach in a positive light.

Article 21: Transfer of resources

Paragraph 1

We rate the envisaged option of a transfer of up to 5% of programme financial allocations from any of the Funds to any other Fund under shared management in a positive light in the interest of greater programme flexibility.

Article 31: Flat-rate financing for technical assistance of Member States

We welcome the envisaged reimbursement for technical assistance to each programme based on a flat-rate by applying set percentages of the eligible expenditure. However, we view the reduction of technical assistance in the ERDF from 4% to 2.5% in a negative light. In spite of the simplification measures envisaged, the managing costs will not decrease by so much as to be able to compensate for the reduction of technical assistance by 1.5%. Hence, we plead in favour of retention of the 4-per cent limit.

Article 37: Transmission of data

Paragraph 1

The transmission of data according to Article 37 Paragraph 1 should be set at quarterly reports and not two-monthly reports.

Projects mostly progress less quickly, requests are also more likely to be submitted on a quarterly basis by the beneficiaries, in order to keep the corresponding expenses low. In this respect, there are no substantial changes in a period of two months. In addition, the EU Commission also envisages a 90-day period for payments. Therefore, we cannot understand why an even shorter term should be envisaged for regular reporting. Even the discontinuance of the annual implementation report does not represent simplification if instead another figure-based two monthly-report is introduced, which ultimately goes beyond a sensible and necessary level.

Paragraph 3

Article 37 Paragraph 3 lists the data to be transmitted on a two-monthly basis for financial instruments. As already stated with regard to Article 37 Paragraph 1, we plead in favour of quarterly data transmission. However, for the financial instruments, it is not even expedient on a quarterly basis. First of all, the data are mostly filed in the separate accounting systems of the EU management authorities or the intermediary authorities. Secondly, many data, such as those for management costs, are only authoritatively ascertained once annually at the close of the yearly accounts of the financial instrument.

Therefore, the data transmission obligation for financial instruments should only be *"on 31 March of every year in relation to the 31 December of the previous year".*

Article 44: Responsibilities of the managing authority

Paragraph 3 e)

In addition to the purpose (previously description of the operation), in future *"the achievements"* of an operation are also to be presented. This presumes further continuous updating of the list with another point. Even the fact that an operation in the R&D&I area was ended early would be an *"achievement"* to be published. Therefore, it should be sufficient to present the purpose of an operation.

Paragraph 6

According to Article 44 Paragraph 6, the managing authority must ensure that all communication and visibility material is made available to the bodies of the European Union at their request. This is a very extensive demand from the EU Commission. "All communication and visibility material" already begins with the ballpoint pen bearing

the EU overprint, for example, and includes everything from brochures and PowerPoint presentations to construction signs. For this, the beneficiary would first of all be obliged to cede this to the awarding authority. This could only be achieved by increased administrative expense at the cost of the beneficiaries.

The storage of these types of materials also represents a challenge and requires the creation of an additional digital and physical repository. It cannot be assumed that the EU Commission is interested in such an extensive pool of publicity material. If the issue is "only" the concession of usage rights according to Annex VIII, this should be more clearly pointed out.

Article 45: Responsibilities of beneficiaries

Paragraph 1

According to Article 45 Paragraph 1, publicity obligations also have to be adhered to for resources reused for the final recipients of financial instruments pursuant to Article 56. The resources that flow back to the financial instruments according to Article 56 are indeed subject to earmarking, but are, technically viewed, not Fund resources anymore. This was also the view of the EU Commission in the past. The new rule would extend the publicity obligation beyond the programme resources in an improper manner.

Against this background, we suggest the following deletion in Paragraph 1: "*(1) Beneficiaries and bodies implementing financial instruments shall acknowledge support from the Funds* ~~– including resources reused in accordance with Article 56 –~~ *to the operation by: …*"

Over and above this, we suggest that not only the rules for plaques and billboards be linked to the amount of the benefit, but also the rules for the website according to a). In the case of operations where the total costs do not exceed EUR 20 000, a description of the operation on the website should not be necessary. In particular receivers of small benefits often have to involve external service providers. In view of smaller benefit amounts, these expenses would be disproportionate and the money thus spent would then no longer be available for the operation.

Paragraph 2

In the current funding period, the publicity instructions refer solely to the financial instrument itself. According to Article 45 Paragraph 2 in conjunction with Paragraph 1 c), in future the final beneficiary will also be responsible for installing plaques and billboards noting the ERDF co-financing, provided that it is a question of physical investment or the purchase of equipment and the total costs of the operation exceed EUR 500 000. The extension of the publicity instruction now planned is very regrettable and should urgently be reconsidered. In the case of the financial instruments, the issue is not financial assistance according to Article 48. Accordingly, such publicity stipulations will meet with opposition from the final recipients or the intermediaries (banks) that are in contact with the final recipients – also for competitive reasons. Higher volume innovative operations in particular, generally pay standard market interest rates in the case of loans and contribute to the sustainability of the financial instruments with the income generated. The financial instrument is the beneficiary and not the company.

Beyond this, a clear discrimination towards the instruments directly managed by the EU can be recognised here. According to Article 26 of the Commission's proposal for the InvestEU Regulation, the publicity obligations are restricted solely to the implementation partners and do not apply at the level of the funded operation.

Against this background, we suggest deleting Paragraph 2 with no replacement.

Paragraph 3

A financial correction of up to 5% is considered to make little sense as the final beneficiary, in the case of loan and investment Funds, has to pay back the entire support from the Fund even without a sanction. Sanctioning therefore appears to be neither sensible nor possible.

We suggest abandoning the new rule and deleting Paragraph 3 with no replacement.

Article 47: Forms of support

In the current funding period, repayable support is also explicitly named. In Article 47, the forms of support are regulated. However, they are no longer accompanied by the term financial assistance. Therefore, it should be made clear that repayable support outside the financial instruments can also continue to be co-financed. For example, this is important in the case of the funding programmes for energy efficiency measures if the repayment is expected to occur exclusively from the energy cost savings; however, these cannot be determined with certainty at the time of the granting of the financial assistance. Therefore, we suggest the following addition:

"Member States shall use the contribution from the Funds to provide support to beneficiaries in the form of grants (e.g. subsidies and repayable support), financial instruments or prizes or a combination of both."

Article 48: Forms of grants

Paragraph 1 Sub-paragraph 2 Sentence 1

"Where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid."

This provision is unclear as it could be understood that as soon as State aid is involved in funding an operation with operation costs less than EUR 200, 000, the financial aid forms "unit costs", "lump sums" and "flat rates" are not applicable. If in this case only Article 48 Paragraph 1 a) were to be applicable, this would in turn mean less favourable treatment of lower volume operations receiving state aid in comparison to higher volume (> EUR 200 000) operations that either receive or do not receive state aid. Such discrimination would be without substantive grounds and therefore incomprehensible.

Against this background, we suggest adding the following sentence after the first sentence in Paragraph 1 Subparagraph 2: *"This obligation does not apply with regard to State aid; however, it can be optionally used."*

Paragraph 1 Sub-paragraph 2 Sentence 2

The phrasing of Article 48 Paragraph 1 Sub-paragraph 2 Sentence 2 would mean that for flat-rate funding the real cost principle according to Subparagraph 1 a) would be applicable. This would not make sense. Hence we suggest deleting this sentence or rephrasing it as follows:

"Where flat-rate financing is used, only the categories of costs named in Sub-paragraph 1 a) may form the basis for the flat rate."

Article 49: Flat-rate financing for indirect costs concerning grants

In our view, Article 49 should be supplemented by the phrasing in Article 68 Paragraph 1 c) of Regulation (EU) No 1303/2013. Then it would be possible as already in the current funding period to adopt a flat rate which is applied to similar operations in the Union policy.

"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."

Article 52: Financial instruments

Paragraph 2

Fortunately, the previously very detailed guidelines on the possible applications of financial instruments have been deleted.

Paragraph 3

The additional implementation of an *ex ante* assessment in the case of financial instruments has shown itself to be difficult and protracted in the current funding period. A positive development is that the criteria catalogue, which is to be taken into consideration in the context of the *ex ante* assessment has been significantly condensed for the next funding period. In addition, the option to use the *ex ante* assessment from the current 2014–2020 funding period – where appropriate in an updated form – has been created. This should avoid managing costs and delays in establishing financial instruments. Nevertheless, it is incomprehensible that an *ex ante* assessment should be necessary for the financial instruments and not for the grant programmes. After all, there is already an assessment on the application of financial instruments in the context of the programme planning and creation of the operational programme according to Article 17, which is why no additional *ex ante* assessment is required here.

Paragraph 4

We expressly welcome the henceforth unrestricted possibility of support being combined with any other Union contribution. However, the rules in Article 52 Paragraph 4 Sentence 2 are not clear and require clarification, as a combination ban results from this in contradiction to Sentence 1 of this Paragraph (a combination is possible, but cannot be asserted).

Support from financial instruments in combination with other financial assistance is mostly required as additional financing, as otherwise the operation is not realisable. The following example should illustrate this:

Item	**Expenses**	
1	Property	500
2	Construction investments	1 000
3	Machines & facilities	1 000
4	Operating costs	200
5	**Total**	**2 700**
6	grant for eligible investments*	2 000
7	eligible ERDF FI expenses**	2 470

* Total of Items 2 and 3

** Total of Items 2, 3 and 4 and 10% of 5

Financing	
Equity capital	100
Loan from commercial bank	400
ERDF grant***	700
ERDF FI loan	1 500
Total	**2 700**

*** Item 6 X 35% (funding rate)

Therefore, the right to invoice the ERDF co-financed grant as well as the loan from an ERDF co-financed loan fund should be possible. However, this is not clear from the drafted provisions. We request clarification.

Article 53: Implementation of financial instruments

Paragraph 5

In Article 53 Paragraph 5, it is determined for guarantee instruments that the loan providers for the loans underlying the guarantees have to make a selection with regard to the programme objectives and also have to adhere to the rules for conflicts of interest. This does not seem sensible.

Indeed, only underlying liabilities (loans) of the final beneficiary can be guaranteed; however, the decision on the granting of a guarantee is made by the guarantee financial instrument independent of the loan decision. The selection by the loan providing body does not represent a pre-selection procedure in this respect. The selection of the potential final beneficiary of a loan follows market and bank supervisory standard conditions which are to be followed by the loan providing body. Adherence to the objectives of the operational programme is essential for authorisations on the part of the guarantee instrument; however, it plays only a subordinate role in the granting of the loan.

Against this background we suggest deleting the following passage:

"(5) The bodies implementing the financial instrument concerned~~, or in the context of guarantees, the body providing the underlying loans~~ shall select final recipients, taking due account of the programme objectives and the

potential for the financial viability of the investment as justified in the business plan or an equivalent document. The selection process of final recipients shall be transparent, justified by the nature of the action and shall not give rise to a conflict of interest."

Article 54: Interest and other gains generated by support from the Funds to financial instruments

Paragraph 1

In Article 54, rules on the gains generated are laid down. The interest environment currently generates mostly negative interest gains for the investment of liquid resources in treasury transactions. Therefore, the word "interest-bearing" should be deleted. Otherwise, there is no possibility of a cash investment without infringing the rule. The note on sound financial management appears sufficient. The following phrasing is suggested:

"(1) Support from the Funds paid to financial instruments shall be placed in ~~interest-bearing~~ accounts in financial institutions domiciled within Member States and shall be managed in line with active treasury management and sound financial management."

Article 56: Re-use of resources attributable to the support from the Funds

and

Article 62: Specific eligibility rules for financial instruments

In Article 56 Paragraph 1, the utilisation of return flows is regulated. The return flows attributable to the support from the Funds can be re-used for management costs and fees *"associated to such further investments"*. However, this means that return flows may not be used for management costs and fees relating to the first time programme contributions are granted.

In Article 62 Paragraph 3, it is additionally ruled that management costs and fees in the case of directly awarded contracts may amount to up to 5% of the total amount of the programme contributions paid out to final recipients in loans, equity investments or quasi-equity investments.

Fundamentally, we welcome this planned simplification. However, the rules in their combined action substantially restrict the implementation of financial instruments by promotional banks and, for this reason alone, lead to a necessity to tender the services.

Therefore, we suggest the following deletion in the phrasing of Article 56 Paragraph 1, also especially based on the rules of the current funding period:

"(1) Resources paid back, before the end of the eligibility period, to financial instruments from investments in final recipients or from the release of resources set aside as agreed in guarantee contracts, including capital repayments and any type of generated income that is attributable to the support from the Funds, shall be re-used in the same or other financial instruments for further investments in final recipients, under the same specific objective or objectives and for any management costs and fees ~~associated to such further investments~~."

For Article 62 Paragraph 3, we suggest the following addition:

"(3) For point (d) of paragraph 1, management fees shall be performance based. Where bodies implementing a holding fund and/or specific funds, pursuant to Article 53(3), are selected through a direct award of contract, the amount of management cost and fees paid to those bodies that can be declared as eligible expenditure shall be

subject to a threshold of up to ~~5~~20 % in equity instruments and in the case of all other instruments of up to 10%, of the total amount of programme contributions disbursed to final recipients in loans, equity or quasi-equity investments or set aside as agreed in guarantee contracts."

Article 58: Non-eligible costs

Paragraph 1b

~~" the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned; for derelict sites and for those formerly in industrial use which comprise buildings, that limit schall be increased to 15%; for guarantees those percentages shall apply to the amount of the underlying loan;"~~"Financial instruments financed by the ERDF, the Cohesion Fund and the EAFRD may support investments that include the purchase of land not built on and land built on for an amount not exceeding 25 % of the programme contribution paid to the final recipient. In the case of guarantees, this percentage shall apply to the amount of the underlying loan or other risk-bearing instruments. 2. In exceptional and duly justified cases, the managing authority may derogate from the limits in paragraphs for operations concerning environmental conservation."

Paragraph 1 c)

Article 58 Paragraph 1 c) includes rules for the cases in which the value added tax represents non-eligible costs. The rule whereby the VAT is eligible provided that the total cost of an operation lies under EUR 5 million leads to substantial simplification with regard to settlement by beneficiaries and is therefore welcomed: in the current period there are still restrictions for state aid, especially for state aid outside of the De Minimis rules. These types of contradictory rules should be discussed early on in the Directorates-General and corresponding amplifications envisaged, especially in any rewritten General Block Exemption Regulation.

However, the restriction to operations up to EUR 5 million leads to substantial funding gaps in infrastructure operations which are implemented by beneficiaries not entitled to reclaim input tax according to national law such as, for example, local and regional authorities. According to the rules of the Omnibus Regulation currently in force, operations in which the ERDF share does not exceed EUR 10 million belong to minor tourist infrastructure operations. These types of minor infrastructure operations could consequently be funded on the basis of net expenses. Therefore, it is suggested that the limit be raised in Article 58 Paragraph 1 c) or the simplification renounced above the suggested threshold.

"(c) value added tax ('VAT'), except for operations the total cost of which is below EUR 5 000 000; in the case of infrastructure funding, except for operations for which the amount of co-financing from the Funds does not exceed EUR 10 000 000."

or

"(c) value added tax ('VAT'), except for operations the total cost of which is below EUR 5 000 000; in cases above this threshold value, the VAT can be funded if there is evidence of no entitlement to reclaim input tax under national rules."

Article 59: Durability of operations

Paragraph 1

The rule in Article 59 Paragraph 1 ties the beginning of the earmarking term to the last payment to the beneficiary. As the point in time when the final payment to the beneficiary cannot be influenced by the beneficiary this rule complicates the managing procedure, as the beneficiary is only separately informed of the beginning of the earmarking term at a later point in time (= the date of the last payment to the beneficiary).

The rule in the 2007–2013 funding period provided that the earmarking term began with the investment end. The end of the operation, in other words, the point in time when the investment has been concluded and the funded assets have been purchased or manufactured, is planned by the beneficiary and can thereby also be directly influenced by him or her. The point in time is hence already fixed in the course of authorisation of the application and can immediately be incorporated in the notice of approval as a fixed value. Subsequent information provided to the beneficiary at the actual beginning of the earmarking term would hence not be required.

Against this background, we plead in favour of the following adaption in Article 59 Paragraph 1:

"(1) The Member State shall repay the contribution from the Funds to an operation comprising investment in infrastructure or productive investment, if within five years ~~of the final payment to the beneficiary~~ end of the operation or within the period of time set out in State aid rules, where applicable, that operation is subject to any of the following:"

Article 60: Relocation

Paragraph 2

In Article 60, the rules for non-eligible relocation investments are laid down. In this connection, in Paragraph 2, reference is also made to Article 14 Paragraph 16 of the Regulation (EU) No 651/2014. However, as this rule only finds application in regional investment aid, the scope of application of the paragraph should also only refer to regional investment aid and not to any aid. This would lead to high documentation expenses. Audit findings for this would be inevitable with this rule. In addition, Regulation (EU) No 651/2014 expires on 31.12.2020.

Against this background, we suggest the following clarification in Article 60 Paragraph 2:

"(2) Where a contribution from the Funds constitutes ~~state~~ regional investment aid, the managing authority shall satisfy itself that the contribution does not support relocation in accordance with Article 14(16) of Commission Regulation (EU) No 651/2014 or a Regulation which is published in the Official Journal of the EU as a follow-up to this Regulation."

Article 62: Specific eligibility rules for financial instruments

Paragraph 1

Article 62 Paragraph 1 should make it clear that in the sense of standard bank processing in the case of projects supported by the financial instruments, no evidence of receipted invoices or payment receipts essary for the expenses of the end beneficiary.

Against this background, we suggest incorporating the following addition in Article 62 Paragraph 1 as the second sub-paragraph:

"(1) Eligible expenditure…

(a) payments… investments;

(b) resources… final recipients;

(c) payments… Article 52(5);

(d) payments … instrument.

For payments according to a) to c), no documentary evidence is required from the final recipient for the expenses incurred."

Article 63: Responsibilities of Member States

Paragraph 7

The rule in Article 63 Paragraph 7 says that the entire exchange of information between beneficiaries and programme authorities has to take place via electronic data exchange systems according to the stipulation in Annex XII. In this Annex, the rules from Article 10 of Regulation (EU) No 1011/2014 have been adopted. This obligation also already exists in the current funding period for ERDF and ESF (Article 122 of Regulation No 1303/2013).

Against this background, it is preferable to clarify that systems in the current funding period which have not been objected to in the context of system audits, also correspond to the requirements for the next funding period.

Article 64: Commission powers and responsibilities

Paragraph 3

Article 64 Paragraph 3 rules that the EU Commission can require the documents of the Member States in the *"specific format requested"*.

As documents are not always available in all conceivable formats, we plead in favour of the possibility to present documents to the EU Commission in the format available in the Member State. Otherwise, it should already be clarified in the Regulation what format is expected by the EU Commission.

Our suggestion for the phrasing:

"(3) For the purpose of their audits, Commission officials or their authorised representatives shall have access to all necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to operations supported by the Funds or to management and control systems and shall receive copies in the ~~specific format requested~~ format available in the Member State."

Paragraph 4 c) and d)

We suggest the following changes in Paragraph 4 c) and d):

"(c) the Commission shall transmit the preliminary audit findings in ~~at least one of~~ the official language~~s~~ of the respective Member State ~~of the Union,~~ no later than 3 months after the last day of the audit, to the competent Member State authority.

(d) the Commission shall transmit the audit report, in ~~at least of~~ the official language~~s~~ of the respective Member State ~~of the Union,~~ no later than 3 months from the date of receiving a complete reply from the competent Member State authority to the preliminary audit findings."

Article 67: Selection of operations by the managing authority

Paragraph 3 c)

Article 67 describes selection criteria for an operation. At the same time, the criterion according to Paragraph 3 c) – *"ensure that selected operations present the best relationship between the amount of support, the activities undertaken and the achievement of objectives"* – does not represent a criterion which can be objectively evaluated and checked. It is therefore a subjective criterion. Thus, audit findings and possible differentiated evaluations are predictable. In addition, the corresponding requirement is basically already sufficiently described in Paragraph 1 of this Article.

Against this background, we suggest the deletion of c).

Paragraph 3 j)

Furthermore, the criterion mentioned in Paragraph 3 j) – *"ensure the climate proofing of investments in infrastructure with an expected lifespan of at least five years"* – does not represent a selection criterion, but rather a provision for durability. During the project selection, a guarantee can only be agreed through a requirement (conditions for the future). In our view, this criterion can be relinquished as, according to e) of this specification, an environmental impact assessment or a screening procedure already has to be implemented.

Article 68: Programme management by the managing authority

Paragraph 1

The requirement in Article 68 Paragraph 1 b) represents a huge bureaucratic expense in practice. In the current funding period, this 90-day payment term can be interrupted in the event of certain documents not being available. If the EU Commission wants to maintain this rule, the rules from Article 132 Paragraph 2 of Regulation (EU) No 1303/2013 should imperatively be adopted as otherwise a conflict with the rules in Paragraph 1 a) of this Article could emerge.

Even with incorporation of this rule in the Common Provisions Regulation, no acceleration of payments to the beneficiaries will be generated, but rather only an increase in bureaucracy due to the substantial effort in respect of documentation. In the current period, payment applications are only split following the n+3-objective as, for a part of the expenditure, adherence to all the legal provisions by the beneficiary, especially those regarding awarding of contract, is very time-consuming and sometimes numerous written queries are required. The other easily checked part of the payment application is paid out in a term shorter than 90 days. To some extent, payment applications of a beneficiary overlap due to this. The documentation on adherence to the 90-day deadline and the expense for corresponding documentation and examination do not stand in any relation to the objective set for this rule. Therefore, we suggest deletion.

Over and above this, the reference in Article 68 Paragraph 1 Subparagraph 2 is apparently faulty. The reference should relate instead to Sub-paragraph 1 b).

Against this background, we suggest the following changes in the phrasing:

“(1) The managing authority shall:

(a)…

(b) ensure, ~~subject to the availability of funding~~ that a beneficiary receives the amount due in full ~~and no later than 90 days from the date of submission of the payment claim by the beneficiary~~ . No amount will be deducted or retained and no specific fee or other charge with equivalent effect shall be levied that would reduce the amounts due to the beneficiaries”;

…

~~For point (b) of the first sub-paragraph, no amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce amounts due to beneficiaries. .~~

…“

Article 74: Single audit arrangements

We expressly welcome the rules on a single audit in Article 74 as a step in the right direction. However, the threshold in Paragraph 3 up to which a single audit may be carried out is too low, which is why we plead in favour of increasing this to EUR 2 million for the ERDF and EUR 500 000 for the ESF+.

Article 75: Management verifications and audits of financial instruments

In Article 75, rules on the management verifications for financial instruments are laid down. In the case of guarantee instruments, management or system verifications should, according to Paragraphs 1 and 3, also be carried out for the bodies granting the loans. This does not seem sensible. As already explained in the remarks on Article 53, the body granting the loans does not make a preliminary selection, as the selection for a guarantee occurs independently.

Against this background, we suggest the following changes:

“(1) The managing authority shall carry out on-the-spot management verifications in accordance with Article 68(1) only at the level of bodies implementing the financial instrument ~~and, in the context of guarantee funds, at the level of bodies delivering the underlying new loans~~.”,

~~.~~”

(2)…

(3) The audit authority ~~shall~~ could carry out system audits and audits of operations in accordance with Articles 71, 73 or 77 at the level of bodies implementing the financial instrument, ~~and, in the context of guarantee funds, at the level of bodies delivering the underlying new loans~~”

Article 86: Specific elements for financial instruments in payment applications

The rule for the right to invoice the first payment of up to 25% of the programme contribution and afterwards on the basis of the ongoing paid amounts leads to simplifications in terms of invoicing and is welcome.

However, the requirement for the operations of the final recipients to be invoiced, and thereby single payments with respect to the EU Commission, should be avoided. The ascertainment of one total of the paid or committed

amounts in the invoicing system should be sufficient for this. Therefore, the financial instrument and not the individual loans should also continue to represent the relevant operation in the invoicing system.

Article 99: Decommitment principles and rules

The Commission suggests the abolishment of the n+3 rule and wants to replace the procedure with the n+2 rule. This increases the danger of decommitment, especially if there are delays in realisation. Especially in the current funding period, it has been shown that the n+3 rule offered flexibility in the event of comprehensive delay at the start of the programme. Therefore, we plead in favour of retention of the previous n+3 rule.

Incorrect references

In Article 12 Paragraph 2 reference is made to Article 4 c) vii). However, this is not contained in the ESF+ Regulation proposal. It is rather reference to Article 4 Paragraph 1 xi) which is correct.
The same incorrect reference is also to be found in Article 31 Paragraph 2 c), in Article 36 Paragraph 3 Sub-paragraph 2, Article 45 Paragraph 1 e) Sub-paragraph 2, Article 63 Paragraph 7 Sub-paragraph 3 and in Article 73 Paragraph 3 Sub-paragraph 2.
We request correction of the reference errors.

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu

III. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council regulation on the European Regional Development Fund and on the Cohesion Fund.

Article 2: Specific objectives for the ERDF and the Cohesion Fund

In Article 2, the specific objectives for the ERDF and the CF are specified. Increasing growth and competitiveness of SMEs is here only set out under the specific objective a) (corresponds to the PZ1). In connection with Article 4, which contains the intervention areas, it can be inferred that for SME funding programmes with the objective of growth and increased competitiveness, a reference to innovation must always be made and, in addition, only productive investments according to Article 4, Paragraph 1 c) may be funded. However, a loan fund which certainly also takes the innovation objective of SMEs into account and has the objective of counterbalancing general barriers to obtaining finance for SMEs, would not necessarily be covered by this provision. The necessity of reducing barriers to obtaining funding for financing processes which are not as specific is however also viewed beyond the current funding period. Therefore, we suggest the following clarifying addition in Article 4 Paragraph 1 as Sub-paragraph 4:

"In the context of financial instruments according to Article 52 of the Common Provisions Regulation, general expenditure of SMEs (investments and equipment) can also be supported in the specific objective according to Article 2, Paragraph 1 a) iii) for growth and employment."

Article 3: Thematic concentration of ERDF support

Article 3 lays down the thematic concentration of the ERDF resources. Regardless of the question of how Interreg or the European Territorial Cooperation will be developed in the future, a similar rule for interregional and cross-border cooperation to the one that exists in the area of sustainable urban development should be strived for. Against this background, we suggest the following phrasing for a new Paragraph 7 for Article 3:

"(7) At least 2% of the programme contribution can be used by the Member States for interregional and cross-border cooperation."

Article 4: Scope of support from the ERDF

Not all the specific objectives are reflected in the scope of support, e.g. the development of R&D&I capacities. These are a specific objective, yet not listed as a permissible scope of support. Hence, R&D&I activities may no longer be funded by the ERDF. This is surely not intended. We request correction.

IV. Remarks on the proposal of the EU Commission for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+)

Regarding the common indicators for general support for ESF+ components with shared resource responsibility, it should be made clear that the data should not be collected at the level of the individual persons in funded measures, but rather at the level of the funded operation as a whole.
The current funding period shows that, especially in the case of disadvantaged target groups (e.g. prisoners, low educational level, migration background), readiness to participate in the participant data collection is related to the amount of data to be collected. However, as the data are essential for the monitoring, the gathering and maintaining of the data fields is linked to a high level of expenditure in terms of personnel and time. Against this background, we suggest cutting back on this.

Avenue de la Joyeuse Entrée 1-5, B–1040 Brussels
phone: +32 / 2 / 286 90 71 • fax: +32 / 2 / 231 03 47 • e-mail: info@eapb.eu • website: www.eapb.eu