EUROPEAN COMMISSION

Brussels, 5.2.2019
C(2019) 95 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on the European Social Fund Plus (ESF+) {COM(2018) 382 final}.

The Commission's proposal forms part of a broader package of ambitious measures designed to enhance the social dimension of the Union and respond to the concerns of our citizens. On 17 November 2017 the European Parliament, the Council and the Commission jointly proclaimed the European Pillar of Social Rights. Furthermore, on 2 May 2018, the Commission adopted a proposal for the next Multiannual Financial Framework for 2021-2027 for investing in areas of European Union added value. The proposal for the ESF + reflects the current social and economic context and provides a concrete response to the call from the European public for a more social Europe and for greater investment in people in the European Union.

As the European Union's main instrument to invest in people and to implement the European Pillar of Social Rights, the ESF+ will help build an empowering social Europe and contribute to economic, social and territorial cohesion in accordance with Article 174 of the Treaty on the Functioning of the European Union, a necessary condition for the proper functioning of the European Union as a stable and viable economic and political union.

The Commission welcomes the Bundesrat's broad support for the proposal but notes its concerns relating to some of its elements. The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal in an annex below.

Discussions between the Commission and the co-legislators on the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future.

Mr Daniel GÜNTHER
President of the Bundesrat
Leipziger Straße 3 - 4
10117 BERLIN

The Commission looks forward to continuing the political dialogue with the Bundesrat in the future.

Yours faithfully,

Frans Timmermans
First Vice-President

Marianne Thyssen
Member of the Commission

Annex

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications grouped by topic.

On the ESF+ and cohesion policy budget and allocation

Despite a slight reduction in the proposed Multiannual Financial Framework budget in real terms compared to the 2014-2020 period, cohesion policy still represents the highest share in the proposal. The relative share of the ESF+ of cohesion policy allocations, at about 27%, is even higher than in the current period.

Moreover, the ESF+ cannot be regarded as simply a sum of its current predecessor programmes (the European Social Fund, the Youth Employment Initiative, the Fund for European Aid to the Most Deprived, as well as elements of the Employment and Social Innovation and European Union Health programmes), as policy challenges, which those programmes address, have also evolved. For instance, while some Member States still face problems, youth unemployment levels have improved overall in the European Union. Therefore, the Commission's ESF+ budget as set out in the proposal for the new Multi-annual Financial Framework is commensurate with its objectives.

Furthermore, at national level, the proposed increase of national co-financing rates for cohesion policy funds would also lead to maintaining the overall investment volume in social and territorial cohesion.

The heading "Investing in People" in the proposal for Multiannual Financial Framework 2021-2027 also includes a number of other instruments, including a boosted Erasmus programme and the European Solidarity Corps, which together with the ESF+ will provide support to people in the European Union. The European Union is investing EUR 140 billion in people, if we consider Erasmus+, the European Solidarity Corp, and ESF+ (EUR 123.46 billion in 2018 prices, which makes up EUR 140 billion for the 2021-2027 period). So the European Union resources to skills, social and employment challenges are maintained for the next programming period.

The new allocation method for the funds builds on the 'Berlin formula', adopted by the European Council in 1999, which entails different calculation methods for the three different categories of regions (less developed, transition and more developed regions).

This methodology takes into account the gap between a region's Gross Domestic Product (GDP) per capita and the European Union's average, to reflect regional prosperity. It also includes criteria reflecting social, economic and territorial challenges, such as unemployment, low population density and, for more-developed regions, education levels. The method has already been modified in the successive programming periods to mirror the evolution of social and economic cohesion in Europe.

For 2021-2027, the Commission proposes a modification of the method, to reflect how disparities have evolved over the past years, keep targeting resources to regions that need to catch up with the rest of the European Union the most and ensure a fair treatment for all.

The Cohesion Policy allocation system is therefore slightly modified to focus further resources in less developed Member States and give more financial support to regions facing economic and industrial transition. It is still predominantly based on GDP per capita but also includes new criteria – youth unemployment, low education level, climate change and the reception and integration of migrants – in order to better reflect the socio-economic challenges on the ground. Finally, the Commission proposes a 'safety net' to avoid too abrupt changes in Member States' allocations.

On audit

The proposal for a Common Provisions Regulation envisages a reduced number of controls and audits, hereby decreasing the administrative burden of authorities. However, the Commission believes that there needs to be a balance between simplification and proportionality on the one hand, and ensuring that the European Union budget is spent in a sound, legal and correct manner. That is why in the proposal the single audit principle has been extended and programmes under certain conditions benefit from an enhanced proportionate approach.

On a single rule book

In the Commission's consultations with the High Level Group monitoring simplification for beneficiaries of European Structural and Investment Funds and with other stakeholders, the idea of a single rule book did not receive support due to the recognition that a "one-size-fits-all" solution must be avoided, as it would not address the specific needs of different policy areas, stakeholders and projects. Instead, efforts were made to identify the critical minimum where harmonisation can be positive for simplification, and allow for the different Funds' specificities to be preserved in order to achieve more effective results on the ground.

On university/tertiary education

The Commission agrees with the importance of enabling individuals to follow smooth learning pathways throughout their lives, including by providing access to quality higher education. That is why in the ESF+ proposal, Article 4, specific objectives 1.iv, 1.v and 1.vi all encompass university education.

On social innovation

The Commission has proposed to stimulate social innovations in two complementary ways under the ESF+. First, all Member States are required to support social innovation and social experimentation and/or strengthen bottom-up approaches based on partnerships between public authorities, the private sector and civil society. This is in line with the current European Social Fund. Within this context, the ESF+ will support social innovation as a cross-cutting principle in the shared management strand aimed at re-designing delivery mechanisms for employment, education, social inclusion and support to the most deprived. For this purpose, we wish to incentivise such actions by using increased European Union co-financing rates of 95% of up to 5% of the total national ESF+ allocations when supporting social innovation under any of the specific

objectives (except specific objective (xi) on material deprivation). Member States are free to programme social innovative beyond the 5% of the total national ESF+ allocations using regular co-financing rates.

Second, the Commission will continue to provide direct support to social innovation and experimentation for actions of increased European added value and which are transferable across Member States, regions, social partners and civil society, under the Employment and Social Innovation ("EaSI") strand. The transfer or upscaling in the same country and across borders of successful innovations will be promoted through transnational partnerships (calls for proposals to support transnational projects at European level to replace the current coordinated calls that are not meeting the expectations in practice in the current programming period), validation of innovative solutions, mutual learning, methodological/technical support for stakeholders and the creation of an appropriate information management system.

On support to social partners

Full partner involvement in all stages of the programme, from initial design through to ex-post evaluation, is the best way to ensure that lessons learned from experience are used to improve policy design and effectiveness in the future. Therefore, the partnership principle will remain an important point in the preparation and implementation of shared management funds.

However, there is evidence that social partners have weak capacity, that there is weak bipartite social dialogue, as well as that there is insufficient involvement of social partners not only in the design and implementation, but also the monitoring and evaluation of reforms, policy-making and Funds implementation.

That is why it is extremely important for the Commission to continue to support social partners in line with the principles of the European Pillar of Social Rights. Strong social partners are key to good and shared implementation of our policies and our funds.

On the mid-term review

The main objective of the European Social Fund as established by the Treaty is to improve employment opportunities for people in the European Union. In order to ensure that the European Social Fund can achieve this goal and contribute to cohesion, it should be focused on the challenges faced by Member States as identified in the European Semester process, through the country-specific recommendations and National Reform Programmes. This is fully compatible with cohesion policy; if the Union Funds are not used to address the real challenges faced by Member States, how can they actually contribute to development of regions in Member States? It should also be noted that although country-specific recommendations are addressed to Member States, Member States should implement them in accordance with their institutional framework (e.g. in a number of cases country-specific recommendations identify challenges which fall under the competence of regions).

This proposal builds on the lessons drawn from the current programming period. The migration crisis showed the weaknesses of the current Multi-annual Financial Framework and the Union budget. 7 years is a very long cycle for a budget. In 7 years the political, economic and social context of Member States and the Union may change substantially. The Union budget should be more resilient and be able to respond to new challenges that require rapid action. Therefore, increasing the flexibility of the Union budget, including the shared management Funds, is one of the core elements of the proposals for the next Multiannual Financial Framework.

One of the key elements to increase the flexibility, amongst others, is the mid-term review. The mid-term review allows Member States to allocate the resources of a programme for the last two years of the programming period, taking into account the recent developments in the socio-economic context, in particular challenges identified in the European Semester and country-specific recommendations of 2024.

The Commission considers that the corresponding administrative burden is relatively low and for many programmes will be marginal. In 2014-2020, Member States facing changes in their socio-economic context are forced to reallocate funding from programmed measures to respond to new challenges. This may lead to constraints, as measures that were already planned have to be readjusted. The mid-term review follows a different approach. As the resources for the two last years in a programme are not yet allocated to priorities (and measures) of the programme, Member States have the possibility to have a fresh look at the most recent socio-economic context and allocate the funding according to the new challenges without disrupting previous planned measures. In case there are no new changes in the socio-economic context, the programming will also be very simple. Member States can simply decide to allocate the funding to the priorities of the programme on a pro rata basis (following the allocation of previous years). There remains sufficient time for Member States to spend the resources programmed in 2025 as - given the N+2 rule - Member States have until the end of 2028 and 2029 to spend the allocations for 2026 and 2027. The programming of the 2026 and 2027 allocations following the mid-term review is subject to approval of the monitoring committee, like any other programme amendment.

Finally, it should be noted that even if there are no new challenges, Member States may still have to "adjust" their programmes due to the technical adjustment. These adjustments will be done together with those related to the mid-term review.

<u>On the social inclusion thematic concentration</u>

As social inequalities and poverty remain a major concern in the Union, the Commission proposed that at least 25% of the resources of the ESF+ shared management strand should be allocated to fostering social inclusion. This provision aims to ensure that Europe's social dimension, as set out in the European Pillar of Social Rights, is duly put forward and that a minimum amount of resources targets those most in need. The Commission finds this proposal proportionate, as already in this programming period this level of investment has been reached (and even surpassed in some Member States) and we believe it is important to preserve what has been achieved in this area.

On co-financing rates

Cohesion policy co-financing rates were raised in a time of economic crisis, to ensure the continuity of investment in regions hard hit by the crisis. The Commission proposes to decrease them to reflect the improvement of budgetary conditions across the Union, as Member States are consolidating their financial situation after the crisis. We believe that the decrease will also create a greater "ownership" by beneficiaries and is expected to improve the quality of projects. Finally, this measure would maintain the overall volume of public investments in key sectors of EU importance.

On simplified cost options

There are several tools available to comply with the requirement to use simplified cost options for small operations. For individual operations, the managing authority may wish to make use of draft budget(s) on a case-by-case basis as foreseen in Article 48(2)(b) of the proposal for a Common Provisions Regulation.

Article 14(4) of the ESF+ proposal is introduced to ensure the respect of the sound financial management principle. The Commission takes note of the concerns raised in relation to Eurostat data availability and will look into this technical issue.

The flat rates for technical assistance are a major simplification for programme authorities and are in line with implementation progress of the operational programmes. For the beginning of the programming period, Member States may also wish to make use of technical assistance from the current programming period under real costs.

On reporting

In a context of fewer resources, we have to be in a position to show the added value of the Union budget and the European Union Funds. This is not possible if we are only able to provide data once a year. We have to be able to show to our citizens what the Funds are doing by providing updated data. We consider the proposal to be quite balanced in this respect. It addresses this need for almost real-time data, without overly increasing the administrative burden for authorities given that, mostly automatized, quantitative data reporting is required. The number of indicators is reduced, focused only on key indicators that show the added value of the ESF+, Member States will now be able to rely on central data registries. We believe that the proposal strikes a good balance between the need for quality data and the need to avoid increasing administrative burden for authorities and beneficiaries.

On Value Added Tax (VAT)

The Value Added Tax (VAT) provision in 2014-2020 led to numerous interpretation questions by programme authorities. It has also been a source of errors leading to financial corrections. That provision referred to national VAT rules and the notion of whether the VAT is recoverable or not - hence creating difficulties given the variety of VAT regimes in Member States. To make it simpler for beneficiaries and programme authorities, a simpler rule is proposed: for projects below EUR 5 million of total cost the VAT is eligible while for those which are above it is ineligible. The majority of supported

projects (in terms of their numbers) are below a total cost of EUR 5 million - hence this is a simplification for the majority of the beneficiaries. At the same time the biggest financial volume in terms of VAT is related to projects above EUR 5 million - ineligibility of VAT there helps safeguarding the cohesion policy budget for investments.

On pre-financing

The reduction of pre-financing is primarily motivated by budgetary considerations, with regard to the level of payment appropriations expected in 2021, 2022 and 2023, cumulating the peak of payments under 2014-2020 programmes and the take-up of the new period. The impact of this measure should nonetheless be low, given the expected faster start of programme implementation, enabled by substantial simplification (no need for designation or ex-ante evaluation of programmes, key elements of delegated and implementing acts incorporated in the basic act). It will accelerate the normal reimbursement flows. In addition, given the peak of payments expected in 2021 – 2023, related to the implementation of 2014-2020 programmes, sufficient cash flow will be generated, possibly used for launching the new programmes as well.

On communication requirements

The provisions proposed are meant to ensure that the communication angle of the policy is strongly reinforced and that all actors in this framework (beneficiaries, programme authorities, etc.) take an active role in this regard. The Commission is of the view that where Funds are used to support communication and visibility material, agreements with contractors need to be made in view of ensuring the further reuse of that material either by the Commission or other Union institutions or bodies.

On monitoring data and indicators

The empowerment under Article 33(3) of the proposal for a Regulation on the ESF+ would allow the Commission to amend the indicators where it is considered necessary to ensure the effective assessment of progress in the implementation of the strands. This empowerment would, in cases such as the simplification brought by the Omnibus Regulation with the deletion of the household indicators from the ESF common indicators, make simplifications swifter.

Article 15(5) of the ESF+ proposal makes reference to the provisions of the General Data Protection Regulation (points (c) and (e) of Article 6(1) of Regulation (EU) 2016/679) in accordance with which the Member States the Managing Authorities to obtain data from registers or equivalent sources.

Data required in (1b) of Annex I relate to potential disadvantages. They do not have to be asked from the participants (any more), even if they are not available in registers, as they can be estimated by the beneficiary.

On informed estimates in annex I 1(b)

Estimations by the beneficiary have to be informed, meaning they follow a certain methodology.

***