



Brussels  
REGIO.C.1/MFJ/ym

**DRAFT REFLECTION NOTE**

**COVID - 19 AND “RECOVERY PLAN FOR EUROPE” INSTRUMENTS:**

**RISKS FOR THE LEGALITY AND REGULARITY OF EXPENDITURE AND MITIGATING MEASURES. FOLLOW UP TO 26 NOVEMBER 2020 WORKING GROUP OF AUDIT AUTHORITIES.**

**1. OVERVIEW OF THE FUNDING AND ALL INSTRUMENTS**

**1.1. Two-fold response: Mobilising investments via**

1. Next generation EU: EUR 750 billion (financing raised on financial markets 2021-24)
2. A reinforced long term budget of the EU (MFF 2021-2027) : EUR 1100 billion  
The Commission also proposed additional own resources later (develop the EU Emissions Trading system, carbon border adjustment system, new digital tax)

**1.2. These funds will be rolled out across three pillars:**

1. Supporting Member States to recover
  - Recovery and Resilience facility: EUR 672.5 billion (360 loans, 312.5 grants) (not under Shared management but in financing “similar” investments).
  - **Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU):** EUR 47.5 billion (additional resources under programming period 2014-2020)
  - **Reinforced Just Transition Mechanism:** + EUR 10 billion
  - Reinforced Rural development programme: + EUR 7.5 billion
2. Kick-starting the Economy and helping private investments:
  - Solvency Support Instrument
  - Strategic Investment Facility
  - Enhanced Invest EU programme: + EUR 5.6 billion
3. Learning the lessons from the crisis
  - New Health programme (Health4EU)
  - Reinforced rescEU (European Civil Protection Mechanism): + EUR 1.9 billion
  - Reinforced Horizon Europe (+ EUR 5 billion)
  - Neighbourhood, Development and International Cooperation
  - Humanitarian aid

Moreover, there will be more flexible emergency tools:

- Solidarity and emergency reserve
- Extension of the **Solidarity Fund**
- European Globalisation Adjustment Fund

Finally, on 25 December 2020 the Commission has proposed to create a **Brexit Adjustment Reserve (BAR)**.

The REACT-EU, the JTF, the Solidarity Fund and the BAR (in bold) will be managed by REGIO. Moreover, in parallel Member States will benefit from the CRII and CRII plus measures (no new money but reallocation in existing programmes, see below). However, other instruments even if not managed by REGIO might address the same beneficiaries. More details on the Funds can be found in annexes 1 to 4.

### **1.3. Other crisis response**

The EU has not only increased funding and adopted new instruments but also adjusted/clarified existing rules in order to allow Member States to fight the crisis efficiently. The most important measures are:

- **Coronavirus Response Investment Initiative** (CRII and CRII plus) amendments of the CPR: 37 billion (of commitments) is available from the three cohesion policy funds (European Regional Development Fund, Cohesion Fund and European Social Fund) as from 2020 (eligibility start date: 1 February 2020) to address the crisis. Member States can focus these resources on the most urgent needs (health-related expenditure, preventing job losses through short-time work schemes and supporting SMEs by financing working capital but also help to education). Moreover, they may request up to 100% EU financing to alleviate pressure on national budgets. Some EUR 17 billion are already reallocated within programmes through programme amendments.
- Use of all flexibilities under the current legal framework for public procurement in emergency situations: in particular the COVID-19 outbreak has been recognised as an unforeseeable event and extreme urgency which justify the use of negotiated procedures and, under certain circumstances, even direct award<sup>1</sup>. Overriding reasons relating to the public interest such as public health allow Member States to provide for a derogation from the mandatory exclusion criteria.
- State aid rules: The State aid Temporary Framework to support the economy in the context of the COVID-19 outbreak, based on Article 107(3)(b) of the Treaty on the Functioning of the European Union, recognises that the entire EU economy is experiencing a serious disturbance. The temporary State aid Framework has been prolonged until 30 June 2021 (capitalisation measures until 30/09/2021).

### **1.4. Timing / eligibility period**

Out of all these instruments, some have declared expenditure already as for example the expenditure declared following the CRII amendments. In as much as this expenditure

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<sup>1</sup> Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01)

has not yet been included in the accounts submitted in February 2021 in relation to the accounting year 2019-2020, expenditure related to CRII amendments will be included in the 2020-2021 accounting period, for which audit authorities have started sampling (first period) as from January 2021.

For REACT-EU<sup>2</sup> expenditure may therefore fall into the accounting year 2020-2021.

Other instruments such as the JTF are linked to the new programming period but will also start as soon as the CPR is published and the programmes adopted.

Finally, the RRF (outside MFF) will start as soon as the Regulation is adopted (submission of plans by April 2021 with 10% prefinancing, 70% to be committed in 2021 and 2022, requests for funding (commitments) until end 2023, for reforms and investments until mid- 2026).

This means that during a number of years of the next programming period the different programmes will run in parallel, with different end date each (in any event shorter implementation periods than cohesion policy programmes).

## **2. RISKS**

At the working group meeting the following main risks were identified. The list is not exhaustive. It should also be borne in mind that not all risks apply to all programmes / Member States and that the level of risk is also highly depending on the level of financing received by Member States<sup>3</sup>.

Moreover, not all risks will materialise at the same time. For example the use of urgent procedures in public procurement will relate mainly to contracts awarded in February – April 2020 while the risk of double financing between different instruments may occur, if it materialises, only as from second semester 2021.

1. Risks of not adapting our audit approach to the new more flexible rules on State aid and public procurement
2. Related to public procurement
  - Undue use of the emergency / urgent procedures even when the necessary conditions are not/no longer satisfied (exceptional procedures used for more than to cover the gap until return to normal procedures is possible);
  - Simplified rules for emergency/ urgency procedures are disregarded
  - Lack / insufficient audit trail on the need to use emergency /urgent procedures;
  - Conflict of interest and corruption because of less competitive procedures;
  - Low quality tender specifications due to the short deadlines. The low quality may lead to changes of the contract during implementation.

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<sup>2</sup> Regulation (EU) 2020/2221 amending CPR Regulation (EU) 1303/2013, OJ 2020 L 437, 28.12. 2020, p. 30.

<sup>3</sup> Annexes II and III give the allocations per Member States for the JTF and REACT-EU.

- Entering into contractual relationship with unreliable counterparts, i.e. insufficient verification of admissibility criteria;
  - In case the Member States apply the derogation to mandatory exclusion grounds the EU funding could go to companies who committed serious crimes;
  - Overpricing due to the emergency situation
3. Related to the urgency of the situation
- Low quality of calls for proposals, which might make it more difficult for beneficiaries to participate, might affect the quality of the applications, it might also complicate the assessment of proposals.
  - Acceptance of applications for operations of lower quality/of “borderline eligibility” due to pressure to take up new possibilities within limited time;
  - Pressure to spend the additional money quickly could reduce the time / rigorous approach for the selection of operations and the management verifications;
  - Declaration of irregular expenditure due to more limited management verifications, affected by time pressure in combination with COVID confinement rules. No or less on-the-spot management verifications prior to declaration.
4. Related to the CRII and CRII plus amendments of the CPR and the new instruments
- Retrospective funding of operations (narrowly allowed under CRII amendments back to 1st February 2020) potentially increases the risk of irregularities as the operations did not go through a complete ex-ante selection procedure.
  - Specific inherent risks depending on the type of investment supported (SME support, short time work schemes, health equipment and infrastructure...).
  - 100% co-financing rate might bring a risk of less controls because national financial resources are not at stake;
  - “Lighter” assurance due to smaller sample of audits of operations or due to non-finalised audits of operations.
5. Related to the pressure / workload for the authorities
- Overlap of programming periods
  - 2014-2020: large additional funds (REACT-EU) which need to be negotiated / programmed / spend in parallel to the start of the next programming period
  - 2021-2027: large additional funds possibly managed and controlled by the same authorities (RRF, increase of the JTF) while the negotiations are on-going, (projects may receive both RRF and ERDF/CF funding but not for the same costs), overlapping thematic objectives may generate a risk of double financing;
  - Insufficient administrative capacity: without prejudice to the additional Technical assistance provided, Member States need time to increase their administrative capacity in particular related to control activities.

## 6. Related to the sanitary situation

- Programme implementation can be affected by the impact of sanitary situation on functioning of authorities. Confinement and Stay-at-Home measures might have negative impact on co-ordination, flow of information, and efficiency of services involved in the management and control system of the EU programmes and on the interaction with (potential) beneficiaries. Adjustments to remote working environment might take some time to settle in.
- Management verifications and audits might be less “in depth” because being carried out remotely and not on the spot;
- Existing projects (already selected and partially implemented before the sanitary crisis) might have difficulties to deliver (e.g. conferences that did not take place, staff for a R&D project that could not work in the laboratory).

## 7. Related to the multiplication of instruments

- Risk of double funding between different funding instruments or programmes (contracting authorities may fail to exchange information on applications for funding, projects and irregularities. Risks increase in situations in which there is no listing of risky or excluded operations or of beneficiaries involved in many projects covering the whole Member State);
- Due to the “competition” between different instruments, especially if for some instruments it is easier to justify costs (RRF) or if for one instrument the money needs to be spent faster (2023 (REACT) and 2026 (RRF) horizons).

## 3. POSSIBLE MITIGATING MEASURES TO REDUCE RISKS/ MAINTAIN HIGH LEVEL ASSURANCE

### 1. Adjust audit methodology

First of all auditors should ensure to **audit CRII and CRII + measures against the applicable (flexible) rules**. To achieve this, two options were identified:

- Incorporate specific instructions / clarifications into existing checklists. These checklists should also make reference to the clarifications sent by GROW in March in relation to the urgent procurement procedures.
- Develop dedicated checklists

It might be easier to adapt existing checklists. This would be easier for the work of the auditors as there would be no need to select the correct checklist beforehand.

Moreover, when auditing AA should take account of the emergency situation in which the authorities were in March/April and avoid gold plating during audits. Questions were raised on how to assess the emergency situation and if there would be a cut-off date. However, there is no reply to this (unless national laws or regulations have set clear deadlines) and it will be addressed via the instructions on use of the checklists and on a case by case basis.

It is of outermost importance that all authorities and also EC and ECA co-ordinate as much as possible their approaches in order to avoid different interpretations.

## 2. Cooperate with MA/IB and CA

Members of the working group agreed that it was important to **share the identified risks with the managing authorities** in order to allow them in a first instance to avoid irregular expenditure. The way to best achieve this depends on each Member State and on the structure of the management and control system. The right balance should be found in order not to add additional administrative burden to the managing authorities and intermediate bodies.

For example the Greek audit authority proposes to create a thematic network with the participation of the audit authority, other national coordination bodies and managing authorities and intermediate bodies with the aim of assisting MAs and IBs in the adaptation of their management verifications methodology and to find a common line to tread fraud risks.

It is important to be able to **clearly identify the expenditure (CRII, REACT-EU) in the national IT system** (2014-2020 programming period) in order to be able not only to adapt the audit methodology but also to have a clear view of the composition of the audit population to decide whether the sample parameters should be adapted (i.e. **stratification**). The audit authorities are therefore encouraged to contact the certifying authorities in order to discuss how to best achieve this.

The risk of double funding is considerable mitigated if the same authorities (with appropriate staff and capacities) are responsible for the different funds or if all authorities managing the different funds have access to the different databases or, even better, if a single database is used.

If the authorities are different and no single database is existing the authorities should implement a procedure to exchange information between fund managers and also with the audit authorities. This exchange should be via electronic files or by giving direct access to the different databases. This would allow managing authorities and audit authorities to check if the operations (in the sample for AA) are not also funded by other funds / instruments.

Moreover, audit authorities should also ensure in its system audits that adequate procedures are in place to avoid double funding and a specific section is introduced in the checklists for selection and management verifications. If applicable, this should also be verified during on-the-spot management verifications or audits in the beneficiary's accounting system.

In any event the audit authority should have procedures in place (a clear instruction in the applicable checklist) to verify during audits of operations that there is no double funding for the sampled operations either by checking in the different databases or by requesting the relevant information to the different authorities.

## 3. System audits

A good way to address these specific risks is to carry out **thematic audits** on the management and control systems in relation to these types of expenditure. The audit authorities should consider the specific risk factors in relation to the Covid measures

(e.g. amount of CRII re-programming in a given programme, expenditure declared in health...) when doing their risk assessment and preparing the audit plan.

A possible way to address the risks linked to CRII amendments of the CPR are **early preventive system audits** to understand for example how the **selection procedures** of these specific operations have been designed and applied. It would also allow to see for example how the MA/IBs adapted to the sanitary situation by adjusting its on-the-spot management verifications. There might be also new intermediate bodies (or managing authorities) that will need to be audited.

#### **4. Stratification**

Stratification of the population is a good method not only to get specific assurance on CRII measures but also to be able to isolate potential high errors. The need to stratify the population to draw the sample of audits of operations should be assessed once the population is known. Criteria to take into account to decide whether to stratify or not is the amount of expenditure under CRII and CRII + but also the relative importance of this expenditure compared to the total population. However, in order to carry out this analysis and to stratify if possible it is of outermost importance to be able to clearly identify the different expenditure types (see point 2 above).

#### **5. Training of auditors/ awareness raising**

Auditors should have all the information at their disposal to adapt their audits to the situation and the new rules (e.g. State aid). The Commission encourages the audit authorities to share the three communications from March/April as well as the link to the Wiki in which many replies to questions are listed (i.e. How to treat a project that could not be implemented? What are the conditions to fund completed projects?).

#### **4. CONCLUSION**

It is important to be in contact with the managing authorities and certifying authorities to ensure that the expenditure is clearly identified and to be early informed on any new / exceptional procedures.

Although there is not one way how to best report on these additional measures it is evident that the population needs to be clearly identified and analysed to take the necessary decisions on the sampling and the need to carry out thematic audits. Stratification might allow, - in case the CRII and REACT-EU expenditure have an important share -, to “isolate” potential problematic expenditure and to ease the focused implementation of potential corrective measures.

## Annex I: Details of the new instruments / measures

	Funds	Eligibility period	Amount	Description / type of expenditure co-financed
Corona response Investment Initiative (CRII)	CF, ERDF, ESF	01/02/2020-31/12/2023	37 billion	<p>Health-related expenditure, preventing job losses through short-time work schemes and supporting SMEs by financing working capital (FI and grants)</p> <p>Up to 100% co-financing rate for accounting year 2020-2021, eligibility of expenditure for completed or fully implemented projects fostering the crisis response before the programme amendment (as from 1/2/2020), no thematic concentration, additional transfer possibilities between funds and categories of regions (2020 allocations), eligibility of ERDF support to undertakings in difficulties, flexibility in dealing with failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the Covid-19 outbreak.</p>
Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU)	ERDF, ESF, FEAD	End 2023	47.5 billion	<p>Projects that foster crisis repair capacities in the context of the coronavirus crisis, as well as investments in operations contributing to preparing a green, digital and resilient recovery of the economy.</p> <p>ERDF: primarily to support investment in products and services for health services and to provide support in the form of working capital or investment support to SME. In order to create the right conditions for recovery, it should also be possible to support investments contributing to the transition towards a digital and green economy as well as in infrastructure providing basic services to citizens, or economic measures in the regions that are most dependent on sectors most affected by the crisis (for example tourism, culture, hospitality services, etc.).</p> <p>ESF: primarily to support job maintenance, including through short-time work schemes and support to self-employed even if such support is not combined with active labour market measures (unless that possibility is excluded by applicable</p>



				<p>national rules). The additional resources shall also support job creation, in particular for people in vulnerable situations, youth employment measures, skills development, in particular to support the twin green and digital transitions, and enhanced access to social services of general interest, including for children.</p> <p>Up to 100% co-financing rate. TA measures can be financed, Interreg can also be financed. Pre-financing of 50% of the 2020 tranche.</p> <p>REACT-EU will be in a separate priority or programme (except for Interreg): to allow the easy and transparent application of a special EU co-financing rate (up to 100%); it will also ensure the traceability of the additional resources and, finally, it will serve the purpose of keeping external assigned revenue on separate budget lines as required by the budgetary rules</p>
Temporary State aid Framework		01/02/2020-30/06/2021	-	<p>Provides for five types of aid.</p> <p>Since ESIF rules follow the State aid rules, undertakings that become in difficulty due to the COVID-19 outbreak would be also eligible to ERDF support aimed at financing of working capital in SMEs to provide an effective response to a public health crisis</p>

## Annex II: Allocation of Just Transition Fund by Member States

### Just Transition Fund

EUR m, 2018 prices	Allocation under the European Union Recovery Instrument	Allocations under the Investment for jobs and growth goal	Total	Share
BE	95	71	166	0,9%
BG	673	505	1.178	6,7%
CZ	853	640	1.493	8,5%
DK	46	35	81	0,5%
DE	1.288	966	2.254	12,9%
EE	184	138	322	1,8%
IE	44	33	77	0,4%
EL	431	324	755	4,3%
ES	452	339	790	4,5%
FR	535	402	937	5,4%
HR	97	72	169	1,0%
IT	535	401	937	5,4%
CY	53	39	92	0,5%
LV	100	75	174	1,0%
LT	142	107	249	1,4%
LU	5	4	8	0,0%
HU	136	102	237	1,4%
MT	12	9	21	0,1%
NL	324	243	567	3,2%
AT	71	53	124	0,7%
PL	2.000	1.500	3.500	20,0%
PT	116	87	204	1,2%
RO	1.112	834	1.947	11,1%
SI	134	101	235	1,3%
SK	239	179	418	2,4%
FI	242	182	424	2,4%
SE	81	61	142	0,8%
<b>EU27</b>	<b>10.000</b>	<b>7.500</b>	<b>17.500</b>	<b>100,0%</b>

\* All amounts reflect gross allocations, before transfers for technical assistance



























\*\* Totals may not tally due to rounding

**Annex III: Allocation under REACT-EU by Member State for 2021 (in million EUR)**

	<b>2018 prices</b>	<b>current prices</b>
BE	245	260
BG	413	438
CZ	790	838
DK	168	178
DE	1,785	1,894
EE	168	178
IE	84	89
EL	1,616	1,715
ES	10,269	10,898
FR	2,926	3,105
HR	541	574
IT	10,693	11,348
CY	105	112
LV	199	211
LT	259	275
LU	132	140
HU	834	885
MT	105	112
NL	417	443
AT	207	219
PL	1,556	1,651
PT	1,508	1,600
RO	1,252	1,329
SI	248	263
SK	583	618
FI	127	135
SE	272	288
<b>Total</b>	<b>37, 500</b>	<b>39,795</b>

## Annex IV: Allocation under RRF (grants) by Member State (in million EUR)

### Recovery and Resilience Facility – Grants allocation per Member State (2018 prices)

	70% allocation (2021-2022 commitment)	p.m. 30% allocation - illustrative* (2023 commitment)
 Belgium	3.402	1.746
 Bulgaria	4.326	1.655
 Czechia	3.301	3.444
 Denmark	1.216	338
 Germany	15.203	7.514
 Estonia	709	308
 Ireland	853	420
 Greece	12.612	3.631
 Spain	43.480	15.688
 France	22.699	14.695
 Croatia	4.322	1.628
 Italy	44.724	20.732
 Cyprus	764	204
 Latvia	1.531	342
 Lithuania	1.952	480
 Luxemburg	72	21
 Hungary	4.330	1.927
 Malta	160	44
 Netherlands	3.667	1.905
 Austria	2.082	913
 Poland	18.917	4.143
 Portugal	9.107	4.066
 Romania	9.529	4.271
 Slovenia	1.195	363
 Slovakia	4.333	1.502
 Finland	1.550	782
 Sweden	2.716	985
 EU 27	218.750	93.750

\*30% allocation based on summer 2020 economic forecast

(In million EUR, 2018 prices)

**Annex V: CRII/CRII+ Reprogramming by Category (Data as from 16/11/2020)**

MS	Health (ERDF + ESF)	Business (ERDF)	People (workers/education) (ESF)	Total
AT	-	-	-	-
BE	0,5	18,9	0,8	20,2
BG	97,6	-	2,7	100,3
CY	76,8	-	9,8	86,6
CZ	-	219,0	-	219,0
DE	5,8	201,0	15,8	222,5
DK	-	7,8	7,8	15,6
EE	-	56,1	-	56,1
ES	2.594,8	398,8	44,8	3.038,4
FI	-	-	-	-
FR	107,6	187,3	11,7	306,7
GR	277,9	1.137,2	-	1.415,0
HR	52,5	270,6	-	323,1
HU	-	440,5	0,1	440,6
IE	219,4	-	-	219,4
IT	752,2	2.435,1	124,0	3.311,3
LT	41,0	20,0	-	61,0
LU	1,3	-	-	1,3
LV	46,6	80,9	-	127,5
MT	-	-	-	-
NL	-	-	-	-
PL	829,9	1.099,6	593,9	2.523,4
PT	88,6	331,2	93,7	513,5
RO	798,4	809,4	164,4	1.772,2
SE	-	-	-	-
SI	0,4	19,8	-	20,2
SK	58,2	329,6	618,7	1.006,5
UK	-	14,4	-	14,4
Interreg	10,7	30,3	-	41,0
<b>Grand Total</b>	<b>6.060,0</b>	<b>8.107,5</b>	<b>1.688,3</b>	<b>15.855,8</b>

**Disclaimers and comments:**

1. Regular updates can be consulted in the [Coronavirus Dashboard](#)
2. Data is based on adopted programme amendments based on a voluntary use of indicators.
3. The total of € 15.9 bn is lower than the sum of the headline values in the Coronavirus Dashboard as apparent overlaps have been removed. Overall amounts can be higher as Member States can reprogramme below certain thresholds without a formal approval by the Commission.
4. Although SE and MT do not yet have adopted programme amendments, the authorities are planning / are in the process of tabling the amendments.
5. From the initial planning communicated by Member States to DG REGIO, over half of the amendments have been adopted so far (ie more requests will still come in).