Council of the European Union
General Secretariat

Brussels, 19 October 2018

WK 12592/2018 INIT

LIMITE

FSTR
REGIO
FC
CADREFIN
CODEC

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From: To:	Commission Working Party on Structural Measures
N° Cion doc.:	COM(2018) 372 final
Subject:	ERDF and the Cohesion Fund 2021-2027: Fiche 10 Scope of support from the ERDF and the Cohesion Fund - Articles 4(1)(c) and 6(1) of the proposed ERDF/CF Regulation COM(2018)372

In view of the Working Party on Structural Measures on 31 October 2018, delegations will find attached fiche number 10 "Scope of support from the ERDF and the Cohesion Fund - Articles 4(1)(c) and 6(1) of the proposed ERDF/CF Regulation COM(2018)372".

EUROPEAN COMMISSION

Structural Measures
2021-2027
Fiche no. 10

31 October 2018

WORKING DOCUMENT OF THE COMMISSION SERVICES

Subject: **Scope of support from the ERDF and the Cohesion Fund – Articles 4(1)(c) and 6(1) of the proposed ERDF/CF Regulation COM(2018)372**

1. Introduction

This fiche describes the above-mentioned provisions in the proposed ERDF/CF Regulation and explains the rationale behind the proposal by drawing on past experience, political priorities and policy considerations. The present document only applies to investments under the ERDF and the Cohesion Fund.

2. Scope limitation under Article 4(1)(c) of the proposed ERDF/CF Regulation

Article 4 lists the scope of support from the ERDF. There is no restriction regarding the beneficiary or regarding the entity benefitting from the investment in this article for areas listed under points (a), (b), (d), (e) and (f) or paragraph (1). Therefore, under these points also entities other than SMEs could receive support. Point (1)(c) however contains a restriction on productive investment.

In accordance with Article 4(1)(c),productive investment could be supported only if it were made in SMEs. The overall purpose of this limitation in the scope of support is to focus the ERDF support on SMEs – they provide for most jobs created and may need public support to develop. Large enterprises can easily access loan-based support; grant schemes for them may be the source of deadweight.

The second paragraph of Article 4(1), however, would enable such support for entities other than SMEs, provided that their investment would involve cooperation with SMEs in the area of research and innovation. Corresponding support would have to be programmed under the specific objective "enhancing research and innovation capacities and the uptake of advanced technologies" (Article 2(1)(a)(i) proposed ERDF/CF). This possibility aims at strengthening the development of R&I activities, enabling SMEs to cooperate, for example through clusters, with larger enterprises usually having greater R&I capacities.

3. Exclusions under Article 6(1) of the proposed ERDF/CF Regulation

Article 6 would extend the scope of the existing exclusions in Article 3(3) of Regulation (EU) n° 1301/2013 for the ERDF for the period 2014-2020. Article 6(1) of the proposed ERDF/CF Regulation would introduce new or revised limitations for both Funds on airports (point e), landfills (point f), treatment of residual waste (point g), fossil fuels (point h), broadband (point i) and rolling stock for use in rail transport (point j).

While some exclusions are motivated by policy consideration objectives (airports, fossil fuels, landfills and waste treatment), others (broadband and rolling stock) aim at avoiding duplication of available financing (for investments to achieve reductions on green gas emissions) or ensuring maximal compatibility between the ERDF and the Cohesion Fund support and State aid. This alignment would not imply an automatic compatibility of the Funds' support with State aid (which is of exclusive Commission competence), but ensures that any risk of contradiction between cohesion policy and State aid rules are minimised.

Detailed assessment of exclusion provisions

a. *Decommissioning or the construction of nuclear power stations*

This exclusion would continue the exclusion in place under Article 3(3)(a) of Regulation 1301/2013. It aims at avoiding overlaps with support under the nuclear decommissioning assistance programmes.

b. *Investment to achieve the reduction of greenhouse gas emissions from activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council*

This exclusion would continue the exclusion in place under Article 3(3)(b) of Regulation 1301/2013 and aims at avoiding duplication of available financing, which exists under the incentive system put in place under the EU Emissions Trading System.

c. *The manufacturing, processing and marketing of tobacco and tobacco products*

This exclusion would continue the exclusion in place under Article 3(3)(c) of Regulation 1301/2013.

d. *Undertakings in difficulty, as defined in point 18 of Article 2 of Commission Regulation (EU) No 651/2014*

This exclusion would be in line with the exclusion in place under Article 3(3)(d) of Regulation 1301/2013 and stems from State aid rules.

The aim of the exclusion is to ensure that support for investment is focused on enterprises that are in the best position to contribute to the creation of jobs and growth.

The definition of undertakings in difficulty is set out in Article 2(18) of Commission Regulation (EU) No 651/2014 (GBER). This definition does not cover start-ups and SMEs in creation and does not prevent them from receiving support, reflecting the fact that they may encounter difficulties by their nature, as they are only starting their activities and may thus be struggling to establish themselves on the market and to have access to financing.

e. *Investment in airport infrastructure except for outermost regions*

Investments in airports are already limited in the 2014-2020 period, as Article 3(3)(e) of Regulation 1301/2013 excludes the eligibility of such investments unless related to environmental protection or accompanied by investment necessary to mitigate or reduce negative environmental impact.

The proposed extension of the exclusion is motivated by economic and environmental considerations.

Commercial aviation is a revenue-generating, competitive sector and private funding is available for relevant investments in airport infrastructure, in particular for airports with high passenger numbers (e.g. located on the TEN-T).

For smaller, regional airports, past experience has shown that many supported investments were not viable in the long run. Even with newly constructed or upgraded infrastructure, some airports were not able to generate sufficient revenues and were either closed down or needed to rely on public support. This was pointed out clearly in the European Court of Auditors Special Report on EU funded airport infrastructures[1].

In addition, a key objective for cohesion policy is promoting a transition of the transport sector towards enhanced sustainability and climate resilience. Investing in airports is not a priority in this regard.

The Commission proposed an exception for the outermost regions because, given the remoteness and isolation of these regions, there is no alternative to air travel. Outermost regions are in a particularly difficult situation (remote, small population, struggling economies). This is why the Commission proposes that cohesion policy may continue to support airport investments of strategic importance to an outermost region, taking into account existing accessibility needs in these regions and the lack of private financing.

f. *Investment in disposal of waste in landfill*

The purpose of this proposed exclusion is to ensure consistency with EU waste legislation[2] and objectives.

In 2018, a new landfill reduction target (of 10% by 2035) was introduced in the landfill directive, to prevent detrimental impacts on human health and the environment and to ensure that economically valuable waste materials are recovered through proper waste management.

In this context, EU resources are not meant to contribute to supporting investments in landfills. With the new target, landfilling will have to be significantly decreased. Furthermore, such investments may counteract efforts for reusing, recycling or recovering valuable materials.

g. *Investment in facilities for the treatment of residual waste*

This proposed exclusion is motivated by policy considerations.

Since 2008, EU waste policy follows a hierarchy of measures in the following priority order: prevention, preparing for reuse, recycling, recovery (incl. energy recovery) and disposal. The treatment of residual waste includes operations of low added value at the bottom of the waste hierarchy, such as mechanical-biological treatment and incineration. Furthermore, the revised waste framework directive calls for ambitious recycling targets of 55% and more for 2025 and beyond.

Investing in new treatment facilities can lead to structural overcapacities and to infrastructure that relies on a constant influx of unrecycled waste for decades to come. This creates counterincentives for recycling and a lock-in situation which prevents Member States from reaching their recycling targets.

In this context, cohesion policy aims at supporting a successful transition to the circular economy, notably by adopting a long-term perspective and focusing investment on prevention, preparing for reuse, and recycling.

[1] SR No 21/2014
[2] Directive 2018/851/EC

h. *Investment related to production, processing, distribution, storage or combustion of fossil fuels, with the exception of investment related to clean vehicles as defined in Article 4 of Directive 2009/33/EC of the European Parliament and of the Council*

This proposed exclusion aims at ensuring coherence with international commitments under the G7 and G20 and in the Paris Agreement.

As stressed in the Communication on Clean Energy for All Europeans and the Third Report on the State of the Energy Union[3], the EU is stepping up its action in removing inefficient fossil fuel subsidies in line with these commitments. Public support for oil, coal and other carbon-intensive fuels continues distorting the energy market, creates economic inefficiency and inhibits investment in clean energy transition and innovation. Fossil fuel subsidies also increase the risk of investing in stranded assets, which need to be replaced before the end of their lifetime.

The ERDF and the Cohesion Fund fully focus on supporting a low-carbon Europe by promoting clean and fair energy transition. They also aim at supporting the diversification of regions dependent on energy intensive industries and providing incentives for a just transition;

As regards mobility, the Commission promotes a move away from vehicles powered by oil-based fuels and favours clean vehicles, ultimately powered by energy from renewable sources. Some alternative fuels and energy carriers, however, are not (entirely) free of fossil fuel, at least in a transition period (e.g. blended fuels, CNG, LPG, etc.). Therefore, an exception for clean vehicles identified in the Clean Vehicles Directive[4] is included.

i. Investment in broadband infrastructure in areas in which there are at least two broadband networks of equivalent category

ERDF investments should be focused in areas where broadband access is very slow or very expensive or does not exist, provided there is insufficient commercial potential to attract private investors.

The presence of at least two broadband networks is a sign of commercial interest in the area and of the fact that public funding may merely lead to duplication of existing infrastructure. Therefore State aid rules in such areas limit additional public financing to areas where investments will satisfy a demand which the market cannot fulfil.

In previous programming periods, investments in such areas were thus difficult, lengthy and ultimately triggered requests for reprogramming.

The Broadband State Aid Guidelines distinguish two broadband categories: (i) basic broadband and (ii) Next Generation Access (NGA) networks. NGA networks are infrastructures with characteristics that enable new services and quality features compared to basic broadband, i.e. at least 30 Mbps. The future ERDF limits broadband support to "Very High Capacity broadband", i.e. of at least 100 Mbps, – which is considered NGA. Therefore, the reference to an "equivalent category" shall be read as meaning that the investment in broadband infrastructure in areas in which there are at least two broadband networks of equivalent NGA category is excluded from ERDF

[3] COM(2016) 860 final, 30.11.2016 ; COM(2017) 688 final, 23.11.2017.
[4] Directive 2009/33 EC

and Cohesion Fund support. Support in areas where there is only basic broadband is permitted.

j. *Funding for the purchase of rolling stock for use in rail transport, except if it is linked to the:*

    i. *discharge of a publicly tendered public service obligation under Regulation 1370/2007 as amended;*

    ii. *provision of rail transport services on lines fully opened to competition, and the beneficiary is a new entrant eligible for funding under Regulation (EU) 2018/xxxx [Invest EU regulation].*

In accordance with Article 2 of Regulation EU n°1370/2007, as amended by Regulation EU n° 2016/2338, the notion of "public passenger transport services by rail" covers heavy rail transport mode public passenger transport by rail, excluding passenger transport by other track-based modes, such as metros, or tramways. Therefore, support for rolling stock for the latter modes may be envisaged.

The derogation detailed under point (i) aims at promoting competition in the area of public passenger services. This can best be achieved by tendering public service contracts in a competitive manner whilst at the same time ensuring effective and non-discriminatory access to the key input rolling stock.

EU support for rolling stock linked to already awarded public service obligation (PSO) contracts is not envisaged. Such contracts would already have catered for an appropriate compensation mechanism.

For future PSOs to be awarded, EU support could be granted to satisfy transport needs, help remedy market failures and complete insufficient national resources. The public funding will not be taken into account in the calculation of the compensation. This means that, when calculating the compensation, only costs for the (partial) provision of rolling stock incurred by the operator itself may be taken into consideration, in so far as the operator does not incur the (full) costs for providing the rolling stock itself.

The second derogation detailed under point (ii) also aims at enhancing competition by offering favourable treatment making available rolling stock to new entrants who may receive financial support for it. This is with a view to lowering the "entry costs" for newcomers and then incentivising further market entry.

The reference to the proposed Invest EU Regulation aimed at cross-referring to the definition of new entrant under that regulation when the Commission proposal for that regulation was still under discussion. The final text of the proposed InvestEU Regulation finally did not include such a definition, and the cross-reference under point (ii) is no longer pertinent.

The intention of the Commission is to propose a definition of "new entrant" throughout the revision of the Regulation (EU) 651/2014 - General Block Exemption Regulation.