


1. Structural Funds - horizontal questions

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COVID-19 and Force Majeure

The COVID-19 outbreak has affected Member States in a sudden and dramatic manner and will have implications on the implementation of EU programmes. The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to flexibly respond to the rapidly emerging needs. Furthermore, the Commission is open to discuss with Member States the best possible ways to use the European Structural and Investment Funds to mitigate the impact of the coronavirus crisis and intends to assign top priority to adopting all decisions needed for the fast deployment of funds.

Several Member States have raised the question whether the outbreak can be regarded as an instance of force majeure. That concept is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. In Union law, the notion of force majeure ^[1] generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. Where Union law refers to reasons of force majeure, all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated on a case-by-case basis. Force majeure may be conceived even more restrictively under national law.

There may be instances in which circumstances resulting from the COVID-19 outbreak qualify as a force majeure event and thus constitute a valid justification for the incapacity to comply with an obligation. However, it is not clear that the outbreak is necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful analysis and flexibility should be given to all cases where there is failure by beneficiaries to fulfil obligations in a timely manner for reasons related to the COVID-19 outbreak (for example, the unavailability of staff due to quarantine in a country because of the outbreak). Equally, the Commission will follow the same principles in assessing the compliance of Member States with their obligations.

In any case, all due care must be taken to avoid, mitigate and minimise the consequences of the event.

It is underlined that the legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances. This concerns in particular rules on the management and control system, which remain an important safeguard for the regularity of operations. It should be noted that for EAFRD also the provisions on force majeure laid down in Regulation 1306/2013 apply.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case 145/85 Denkvit België [1987] ECR 565, paragraph 11; Case C-377/03 Commission v Belgium [2006] ECR I-9733, paragraph 95; and Case C-218/09 SGS Belgium and Others [2010] ECR I-2373, paragraph 44

PL	Is the interpretation of the concept of force majeure prepared and how will it possibly be implemented?
LT	Could quarantine in the country be equated with force majeure? We would like to COM explanation in written for as regards force majeure regime and its implications on management of funds.
SI	We are in the state of force majeure, we understand that there is no doubt about it and that the provisions of ESIF regulations, related to force majeure, apply in the current situation?

The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy funds to flexibly respond to the rapidly emerging needs in the most exposed sectors, such as healthcare, SMEs and labour markets, and help the most affected territories in Member States and their citizens. The Commission proposals of 13 March 2020 will allow Member States to benefit from more financial back-up and targeted assistance. The CRII proposal will increase the amount of liquidity available to Member States for operations concerning the fight against the COVID-19 outbreak, eligible as from 1 February 2020 for financing under the ESI Funds, and will also extend the scope of the EU Solidarity Fund.

Furthermore, the Commission is open to discuss with the Member States about the best possible way how the European Structural and Investment Funds might help to mitigate the impact of the coronavirus crisis. In case reprogramming of the funds is needed, the Commission will cooperate with the Member States for the preparation of amendments to the current programmes. If such amendments are non-substantial modifications as referred to in the CRII proposal, they will not require approval by a Commission decision. Otherwise, once agreed, the amendments will be approved by the Commission as a priority.

The Commission will continue to examine carefully any additional needs identified with Member States resulting from the current situation.

PL	Does the EC envisage the development of detailed solutions (change of law, guidelines, instructions) in relation to issues related to the suspension of the implementation of programs and projects in connection with Covid 19?
Multiple MS	Several MS have made proposals for further changes in the legislation.

Ongoing implementation - eligibility & flexibility

See also the section 'COVID-19 and force majeure' above.

As an introductory remark regarding eligibility of cost of operations impacted by the COVID-19 outbreak, it should be recalled that according to Article 65(1) Regulation (EU) No 1303/2013 (CPR), "[t]he eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, this Regulation or the Fund-specific rules."

It is up to the national authorities to check and assess on a case-by-case basis the eligibility of expenditure linked to operations impacted by the COVID-19 outbreak. As set out above, this assessment will have to be carried out mainly in the light of national eligibility rules, also taking into account EU rules, including fund-specific rules, where they determine the eligibility of expenditure. While the Commission does not have detailed knowledge of the specific national rules, it is recommended to take into account the following general remarks, and specific considerations based on them.

1. The legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. This concerns in particular rules on the management and control system (including e.g. the requirement to set up procedures to ensure an adequate audit trail). These rules remain an important safeguard for the regularity of operations. For the EAFRD, the rules for the CAP laid down in Regulation 1306/2013 equally apply.
2. It must be checked whether the operations were impacted by the COVID-19 outbreak.
3. Any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable. In line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: [....]

"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."

Taking into account the fact that the Coronavirus crisis may qualify as unforeseeable, contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.

In addition, Art 72(1)(e) of Directive 2014/24/EU allows for non substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms. Article 72(1)(c) of the same Directive also allows for contract modifications without a new procurement procedure in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50 % of the value of the original contract or framework agreement.

4. Additionally, the beneficiary should exercise due care to claim any amounts/compensation from insurance or any other sources. The amounts constituting a genuine cost (including, e.g., costs incurred as a result of the necessary changes in work methods such as a purchase of digital equipment or capacities) for the beneficiary can be considered eligible. Any amounts received by insurance or compensation from other sources (e.g. liability insurance coverage compensating for the non-fulfilment of a contract, travel insurance compensating for travel expenses of a cancelled event, reimbursable travel and accommodation costs, etc.) must therefore be deducted from eligible expenditure.

Based on these general remarks, regarding expenditure affected in ongoing operations by the COVID-19 outbreak, the following considerations can be made.

National authorities must analyse whether the expenditure at stake (e.g. expenses of travel or accommodation that could not be cancelled and which are not reimbursed from other sources in cases where participation in meetings or events had to be cancelled due to circumstances related to the COVID-19 outbreak – whether personal or organisational), should be regarded as eligible costs in the light of national rules (also taking into account EU rules, including fund-specific rules, where they determine the eligibility of expenditure).

In their actions related to addressing the specific circumstances due to the COVID-19 outbreak, national authorities should take into account the principles of proportionality, equal treatment, as well as transparency (i.e. necessary communication measures should be taken to properly inform beneficiaries).

LV	Dear colleagues, we kindly urge the Commission to provide us with the guidance in the force majeure situation related to COVID. We would appreciate the Commission's guide as to the eligibility of related expenditure (losses suffered beyond the influence of parties) the soonest possible to alleviate the stress and pressure from our partners and beneficiaries. The EC reply is very important to us on the attribution of potential costs/losses to ESIF in justified situations in case of COVID not only from the Technical Assistance, but also from the Specific Objectives. We have a horizontal explanation from EC services on how to act on ERASMUS and other EU instruments. Our institutions involved in the management of EU funds and beneficiaries request clarification from the Managing Authority – we cannot provide this until there is a clear EC response that may or may not be attributed to ESIF (co-financed by the EFSI) in justified cases, ie what should be considered justified. In addition, yesterday an emergency situation has been declared in Latvia in this regard
HR	<p>In light with the latest information on COVID -19 and the fact that it has spread from China to all Member States we are all facing its negative effects. Economic and financial consequences of COVID-19 situation may not yet be certain, but it is foreseeable that will seriously affect both public and private entities. Among health and social impacts, Croatian beneficiaries are facing financial burden caused by the cancelled events. In this respect, OPCC Managing Authority is trying to mitigate negative effects on cash balances of beneficiaries by setting specific cost verification requirements related to scheduled but cancelled events.</p> <p>Basic practice for verification and acceptance of the incurred expenditure is to have proper audit trail such as invoice or equivalent, proof of payment or equivalent and evidence that activity is conducted (such as attendance list, minutes of the meeting, certificate of attendance etc. depending of the nature of the event). Having in mind that majority of scheduled events are being cancelled by the pandemic in all over the Europe and wider, the MA proposes to have an adjusted/tailored approach limited in time and scope for such expenditures. This short-term measure would be applied to planned but cancelled events (such as fairs and conferences) and related expenditure such as traveling tickets, hotel accommodation costs, fees and other costs related to the cancelled event/s which were paid by the beneficiary with no possibility of rescheduling or refund. The mentioned costs must be envisaged in the operation and related to project activities.</p> <p>Taking into account above mentioned we are interested in EC opinion on the proposed measure.</p>
E TC	We are receiving questions from several Interreg programmes on eligibility of expenditure of cancelled missions and meetings due to the Corona-virus.
E TC	The 2 Seas Programme are anxious to have information about the eligibility of expenditures or otherwise related to the cancellation/postponement of events related to the coronavirus crisis.

D E - C Z E TC	The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the <u>project</u> implementation due to the closure of the internal EU borders and/or local organisations involved in the project implementation. Are expenditure eligible, such as cancellation fees for contracts with third parties?
S I- H U E TC	What can we do with expenditures where printing of posters with certain dates was done and now if they repeat it on another date it wouldn't be cost effective. How to prove this to audit authority so that they will understand?
E E - L V E TC	<p>Position of the Managing Authority</p> <p>Covid-19 has been recognized by the WHO as a pandemic[1], so it is considered to be a case of <i>force majeure</i> and costs for activities cancelled due to the proliferation of Covid-19 are eligible under the following conditions:</p> <ul style="list-style-type: none"> • the insurance contract does not cover the expenses incurred, based on the decision of the insurer or other written document (e.g. insurance policy or general conditions of insurance); • the beneficiary has exhausted all possibilities to reimburse the expenditure incurred; • the beneficiary submits via e-MS with partner report: <ul style="list-style-type: none"> - information on abandonment of activities, in case of simplified cost reimbursement methods merely this information will be sufficient; - proof that the beneficiary cannot reimburse or can reimburse only partly the amount paid to the organizer of activity; - credit notes (accommodation, airline tickets, etc.); - documentation on expenses that have not been reimbursed. <p>As regards costs for activities cancelled due to the proliferation of Covid-19, which do not fall exactly under the description above, information about these costs must be submitted to the Joint Secretariat, and the eligibility will be consulted with the Managing Authority, if necessary. After receiving positive feedback from Joint Secretariat it is allowed to insert these costs to the report.</p>
DK	If there conferences and events which do not take place because of COVID19, but for which costs are incurred, are these costs eligible?
PL	Will managing authorities be able to consider eligible expenditure in ongoing projects if there is no objective possibility of implementing projects in accordance with the requirements of EU and national law, e.g. in accordance with the requirements of public procurement law or Regulation 1303?
LT	<p>Is the expenditure for an activity eligible for funding, if it was abruptly due to unforeseeable circumstances and exceptional situations caused by the Coronavirus developments which are beyond the control of the beneficiary and the related costs could not have been avoided.</p> <p>Situation1: May costs incurred for the organization of the project activities (flight, accommodation, etc.) be compensated to the project promoters if the project participants refuse to enter the virus-spreading areas published on the website of the Ministry of Foreign Affairs of The Republic of Lithuania (e.g. until March 11th it was Italy, China, South Korea) or project participants cannot enter the Republic of Lithuania from these countries?</p> <p>Situation 2: Another case where the project promoter planned to organize activities in Lithuania that he wanted to bring scientists to, for example from Italy, but cancelled the event, how the costs incurred by the promoter should be treated</p>

CZ	<p>Will the following costs be eligible:</p> <ul style="list-style-type: none"> other unforeseen costs related to the continuing activities of the projects (costs which were not planned in the budget of the projects) e.g. increasing some categories of the cost: internet connection, acquisition of relevant equipment (notebooks, mobile phones), cloud services, acquisition of protective equipment etc. purchased for example for home office purposes. cost of activities which cannot be realized e.g. educational activities (conferences, workshops, courses, and seminars), counselling and consultation services, schools' clubs e.g. many of the conferences, workshops, courses, seminars, meetings had to be cancelled following emergency measures. Beneficiaries deal with expenses such as advance rentals of premises, related travel expenses, cancellation fees, wage costs, printing materials, etc.
SK	<p>The extraordinary situation related to Covid-19 has caused that many originally planned expenditures could not be made. They include, not limited to, participation fees for fairs that have been cancelled, for air tickets for business trips that were not carried out, etc. Even despite the maximum effort of beneficiaries who tried to cancel such expenditures, they did not succeed in all cases. Is it possible to get those expenditures reimbursed?</p>

See also the sections 'COVID-19 and force majeure' and 'eligibility of expenditure affected in operations' above.

Where the execution of contracts is impeded because of COVID-19, for example, due to unavailability of key staff or products or subcontracted works or services because of the impact of the COVID-19, which may be regarded as force majeure, national authorities should exercise their discretion in permitting substitute performance or delayed performance.

National authorities may thus consider adjusting operations (e.g. deliverables, time limit for execution, etc.) in accordance with their national rules where necessary and justified, in a way to minimise the impact of the force majeure on the programmes.

National authorities could also consider the possibility to select new operations (e.g. if, as a result of the impact of the COVID-19 outbreak, there is a need to interrupt or stop the implementation of operations or when it is expected that the beneficiaries will not achieve the outputs intended) in order to effectively use available resources and to achieve the targets set for the programme. New or additional calls for proposals could be launched if necessary.

The same conditions for assessing eligibility under Union and national rules as those described in section 'eligibility of expenditure affected in operations' above apply to expenditure in relation to projects the implementation of which had started but will no longer be carried out. For example, under a possible force majeure claim, it would be necessary to demonstrate not only that rescheduling or substitute performance was impossible but also that an event was organized in a period when the cancellation due to COVID-19 was not foreseeable.

Furthermore, it should be recalled that any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable.

In line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: [...]

"(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority."

Taking into account the fact that the Coronavirus crisis may qualify as unforeseeable contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive.

In addition, Art 72(1)(e) of Directive 2014/24/EU allows for non substantial modifications, as defined in Article 72(4) of said directive, of contracts during their terms. Article 72(1)(c) of the same Directive also allows for contract modifications without a new procurement procedure in case of a need for modification brought about by circumstances which a diligent contracting authority could not foresee, when the modification does not alter the overall nature of the contract and within a limit of increase in price of 50 % of the value of the original contract or framework agreement.

In their actions related to addressing the specific circumstances due to the COVID-19 outbreak, national authorities should take into account the principles of proportionality, equal treatment, as well as transparency (i.e. necessary communication measures should be taken to properly inform beneficiaries).

Finally, regarding indicators, it should be recalled that according to paragraph 5 of Annex II of the CPR, “[i]n duly justified cases, such as a significant change in the economic, environmental and labour market conditions in a Member State or region, and in addition to amendments resulting from changes in allocations for a given priority, that Member State may propose the revision of milestones and targets in accordance with Article 30.”

LV	Clear rules are needed on how to deal with slowing down projects due to health crises force majeure, for example, eligibility conditions, extension of expenditure period, extension of project deadlines, and provision of actions identified during the monitoring period, achievement of indicators. Guidance is needed on eligibility of expenditure already incurred in the projects affected by the crisis, including clarifications on cases when a project will have to be suspended or will not be implemented in full.
S I- H U E TC	We are now facing the issues how to advise projects in a way how to continue project implementations. Most of the projects have had big events planned and this will not happen any time soon. Also the question is if people will attend if they in reality do the events in the near future is a question.
S I- H U E TC	What happens with programme indicators, a lot of them won't be reached, because inability to finish on time? We have troubles deciding, because there are so many different aspects to consider case by case and we always have audit authority in mind (how will they respond, since even in normal times they were un-normal)!? Do you have any ideas how to approach those questions?
D E - C Z E TC	The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the <u>project</u> implementation due to the closure of the internal EU borders and/or local organisations involved in the project implementation (see below). How to proceed <ul style="list-style-type: none"> • If, for the reasons set out above, project activities have to be cancelled without being replaced and, as a result, project objectives cannot be fully achieved? • If, as a result, projects 'die' in the implementation phase because the initial conditions are no longer in place?
UK	Where contracts have been delayed, is there the possibility of increased flexibility for the Managing Authority to alter/extend contracts to ensure aims and targets can be met?
CY	Can we terminate ongoing projects? Which projects?
UK	In practical terms, how would the Managing Authority, implement the 'force majeure' option should, as looks increasingly likely, delivery of activity cease? Also, has there been a precedent for this in the past and what is the process for informing LP's and all stakeholders?
BG	More clarification is needed on the way the force majeure circumstances are to be applied on projects that have already started its implementation but could not finish it because of the crisis?
CZ	Extension of project realization even beyond the limit set in calls. Most projects of OP RDE will be affected by the COVID-19 crisis, most of them might need to extend the realization phase (not only because of limited activities performed by the beneficiary, but also because of very limited services and activities performed by necessary partners, subcontractors, service providers, public sector etc.).
SI	Due to the impact of the coronavirus, delivery time of services and works are prolonged, equipment, services and works prices rise, and so on. Is it necessary to change the operation to make it feasible in the new framework? Is it possible, in order to achieve the planned goals and objectives, to co-finance an operation that changes in planned activities, equipment prices, implementation prices, ... because of coronavirus impact?

SK	In a large number of projects, it is not possible now to complete implementation of activities until originally set deadlines. Thus, they are getting into delays and fail to meet deadlines for completion of activities (deadlines were specified in calls). Is it possible to postpone such deadlines even beyond the limits set in the calls?
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National authorities may consider to adjust operations in accordance with their national rules if necessary and justified, taking into account the need to ensure the compliance with relevant EU rules, including provisions on selection of operations as laid down in Article 125(3) of CPR and the scope of support from the ERDF as laid down in Article 3 of ERDF Regulation (as modified by proposal COM (2020) 113).

In particular, if the specific contractual obligations in the relevant grant agreements allow so, managing authorities may consider to adjust the scope of the existing operations falling within the health specialisation area identified by the S3 strategy, together with the increase of the available budget and the adjustment of their implementation timetable. Such modifications would not impair the research activities already initiated and would avoid the need to launch new calls for proposals.

If nevertheless contractual obligations do not allow for such modifications, it may be necessary to launch new calls for proposals. It should be recalled notably that any new contract and/or modifications of the existing contract(s) under the operations at stake have to be in line with public procurement rules, where applicable.

HR	Can health workers/researchers who are being paid from ERDF in the frame of a Smart specialisation project on health, but have been now moved to working on COVID research, still be paid from ERDF under the same operation (other health fields) or do they have to launch new tenders and new operations and move those researchers there for them to still be eligible? The existing S3 projects would be put on hold for now and the researchers would continue working on them after the pandemic is dealt with as to ensure achievement of set results of the programme.
SI	Part of the health or other personnel, recruited as part of the ongoing operation, is temporary reassigned to work on the fight against the coronavirus. These new activities are not linked to the original operation and do not contribute to the indicators of operation and OP. Can such operation be modified and could fight against the coronavirus, work of health personnel be also incorporated as eligible for ESI co-financing within the existing operation? Or only new operation, dealing with Covid-19 issues, should be prepared?

The legislative framework for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. Consequently, the programming period laid down in Article 26(1) CPR and eligibility rules set out in Article 65(2) CPR apply and no extension of the programming period is planned.

UK	Where activity is significantly delayed or ceased, has consideration been given to extending the programme?
PL	Does the EC presume any extensions of all applicable deadlines?

First, it should be recalled that the legislative framework for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. Based on the above, national authorities may select new operations in accordance with their national rules, taking into account the need to ensure compliance with relevant EU rules, including provisions on selection of operations as laid down in Articles 65(6) and 125(3) of CPR.

These two Articles already provide for flexibility. For instance in line with national rules, selection criteria can be fixed by written consultation of the monitoring committee, it is possible to allow for a non-competitive selection procedure, it is possible to select an operation that has started before the submission of an application for funding to the Managing Authority, but is not physically completed or fully implemented (provided that the applicable law relevant for the operation has been complied with), and the beneficiary can be provided with an electronic version of the document fixing the conditions of support.

Concerning the public procurement rules, in line with Article 32(2) Directive 2014/24/EU (the public procurement Directive) the negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:

“(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with. The circumstances invoked to justify extreme urgency shall not in any event be attributable to the contracting authority.”

Taking into account the fact that the Coronavirus crisis qualifies as unforeseeable/unpredictable, contracting authorities may make use of the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts insofar as it is strictly necessary because of extreme urgency. Such circumstances require a case-by-case analysis.

The purchase of medicines or sanitary equipment relating to the Coronavirus crisis could be considered as necessary for reasons of extreme urgency within the meaning of Article 32(2)(c) of the 2014/24/EU Directive. In 2015, the Commission adopted a Communication "On Public Procurement rules in connection with the asylum crisis". Even if this Communication was targeting the specific situation related to the asylum crisis, it explains the full set of different possibilities available to the contracting authorities under the EU law to tackle efficiently the different urgency situations. For example, it explains in detail when swiftest negotiated procedure without publication can be used.

Beyond this, the Commission's services are ready to provide help and assistance to the Member States' authorities. The Commission has at present no plans to propose further changes to the EU Regulations relevant for the implementation of operational programmes or the public procurement directives.

UK	Is there likely to be any scope for a lighter touch on selection of operations and/or procurement or selecting recipients? (i.e. if a new operation is required, is there the option to simplify the process for assessment, and then the option for the operation to simplify processes begin delivery?)
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Conditions set under Article 70 CPR have to be fully respected: operations supported by the ESI Funds shall be located in the programme area. Only operations concerning the provision of services to citizens or businesses which cover the whole territory of a Member State are considered as being located in all programme areas within a Member State. In such cases, expenditure shall be allocated to the concerned programme areas on a pro-rata basis, based on objective criteria.

Moreover, as far as operations implemented outside the programme area are concerned, all 4 conditions set under Article 70(2) must be respected: the operation is for the benefit of the programme area; the total amount from the ERDF, Cohesion Fund, EAFRD or EMFF allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the funds at the level of the priority at the time of adoption of the programme; the monitoring committee has given its agreement; the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled.

In accordance with Article 70(1) CPR that allows for Fund-specific rules, the ESF Regulation at Article 13(2) contains a specific rule setting out that the ESF may support operations which take place outside the programme area, but within the Union, if 2 conditions are met: i.e. the operation has to be for the benefit of the programme area and the obligations related to management, control and audit have to be fulfilled. When the operation also has a benefit for the programme area in which it is implemented, the expenditure has to be allocated to those programme areas on a pro rata basis based on objective criteria.

Furthermore, specifically for the EAFRD, fund specific rules require support to be directed to rural areas. However, Member States may also finance operations in other types of area (i.e. urban) if they are clearly for the benefit of rural areas and when they are eligible under the respective Rural Development Programme.

CZ	Outside of the CRII remit - could it be considered to use Article 70 CPR and use part of the funds for operational financing also in Prague?
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Monitoring, reporting, performance framework (ongoing implementation and CRII)

In accordance with the procedure laid down in Article 22(7) CPR, where the Commission, based on the final implementation report of the programme, establishes a serious failure to achieve some targets due to clearly identified implementations weakness, it may consider whether to apply financial corrections in respect of the priorities concerned.

The third subparagraph of Article 22(7) CPR sets out that "financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned *or because of reasons of force majeure seriously affecting implementation of the priorities concerned.*"

Consequently, the Commission will consider in its assessment of whether financial correction is to be applied or, based on the above-referred provision, shall not be applied.

Nevertheless, all efforts should be made (e.g. by making use of the possibilities provided by the Commission's amendment proposals; adjustments to operations; reprogramming if necessary and possible, etc.) to ensure that programme targets are met. The Commission will cooperate with Member States to that end.

UK	Has consideration been given to how 'force majeure' will be taken into consideration at the end of the programme for the performance framework?
BE	With regard to the performance review, can the EC confirm that it will apply Article 22 (7) (3)? 'Financial corrections shall not be applied where the inability to achieve the targets results from the impact of socio-economic or environmental factors, significant changes in the economic and environmental conditions of the Member State concerned or for reasons of force majeure seriously impeding the implementation of the priorities concerned.'

In order not to undermine the performance review exercise which took place based on Article 21 and 22 CPR in 2019, transfers of main allocations to underperforming priorities in the subsequent programme amendments was considered by the Commission as not recommendable for cohesion policy. In addition, and in the logic of rewarding performance, transfers of the performance reserve to the priorities that did not achieve their milestones is not allowed at all, due to the restriction laid down in Article 22(3) CPR that establishes that the performance reserve is allocated the reserve only to programmes and priorities which achieved their milestones[1].

In view of the current crisis following the COVID-19 outbreak, some new needs might be identified by the Member States, which could be covered by priorities underperforming at the time of the performance review. In that respect, in duly justified cases, where the priorities at stake have picked up the implementation pace in the last year and have sufficient potential to implement more resources than currently allocated to them, the Commission can accept a transfer of main allocation amounts to previously underperforming priorities. This is of course without prejudice to the applicable CPR requirements such as thematic concentration, limited transferability between categories of regions (Article 93(2) CPR), etc.

A possible reason for such transfer might be the Commission proposal COM(2020)113 to modify Regulation (EU) No 1301/2013 so that the ERDF investment priority to strengthen research, technological development and innovation can cover investment in products and services necessary for fostering the crisis response capacities in health services.

[1] This does not apply to the EAFRD, where the financing plan does not distinguish between amounts stemming from the performance reserve and main allocation.

EE	Is it possible to top up the innovation priority axis (TO1) even though it did not qualify for the performance reserve? So far the Commission has indicated that this is not possible.
HR	Possibility for reallocation to non-performing priorities

Disclaimer: This reply concerns ERDF, ESF and the Cohesion Fund only.

The Commission proposal for the new Article 30(5) CPR allows Member States to make financial transfers between priority axes of the same Fund within the same programme up to the indicated ceilings without the Commission's decision approving such programme amendments. However, such transfers should be approved by the monitoring committee in advance. They should not affect previous years and should comply with all regulatory requirements, e.g. as regards thematic concentration.

If these transfers have knock-on consequences on the other elements of the programme content (apart from those referred to above), then it is necessary to amend the programme accordingly. The Member State should then request for amendment of the programme and the Commission should approve the request in accordance with the programme amendment procedure as set out in Article 30(1) and (2) CPR.

The CPR provides some flexibility as regards the timing of introducing the necessary programme amendments. Such a programme modification may be launched at a later stage, when the full extent of the EU support to the effective response to the public health crisis becomes clearer. This will allow for taking into account all the consequences for the programmes in a comprehensive manner (e.g. types of actions, main target groups, types of beneficiaries, territories targeted, indicators and their targets, etc.).

Specifically as regards the indicators, Article 27(4) CPR requires that each priority shall set out indicators and corresponding targets in order to assess progress in programme implementation aimed at achievement of objectives. There is no obligation to ensure that all operations and their deliverables are covered in 100% by the indicators. As long as the indicators for the given specific objective allow for the progress assessment, this requirement is considered met.

In particular, as regards the output indicators included in the performance framework, Article 5 of the Implementing Regulation 215/2014 requires that they shall correspond to more than 50 % of the financial allocation to the priority. Article 4(2)(a) and (4) of the implementing regulation requires the bodies amending the programmes to record data or evidence used to estimate the targets. Point 5 of Annex II CPR clarifies that a Member State may propose a revision of the milestones and targets through a programme amendment in line with Article 30(1) and (2) CPR in duly justified cases, such as a significant change in the economic, environmental and labour market conditions, and when it is a consequence of changes in allocations for a given priority.

In accordance with the procedure laid down in Article 22(7) CPR, where the Commission, based on the final implementation report of the programme, establishes a serious failure to achieve some targets due to clearly identified implementations weakness, it may consider whether to apply financial corrections in respect of the priorities concerned.

The third subparagraph of Article 22(7) CPR sets out that “financial corrections shall not be applied where the failure to achieve targets is due to the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions in the Member State concerned or because of reasons of force majeure seriously affecting implementation of the priorities concerned.”

Consequently, the Commission will consider in its assessment whether financial correction is to be applied or, based on the above-referred provision, shall not be applied. The data or evidence used to estimate the value of the target will be essential in that assessment as it will show the impact of socio-economic or environmental factors, significant changes in the economic or environmental conditions or force majeure.

The Commission considers that the situation arising from the COVID-19 outbreak may give grounds to invoke ‘force majeure’, depending on how the situation has affected the implementation of the programme and priorities.

Nevertheless, all efforts should be made (e.g. by making use of the possibilities provided by the Commission’s amendment proposals, adjustments to operations, reprogramming if necessary and possible, etc.) to ensure that programme targets are met. The Commission will cooperate with Member States to that end.

In case of modifications to indicator values resulting from measures taken to address the current COVID-19 outbreak, Member States will need to provide the rationale for the adjustment in indicator targets, including the new indicator targets necessary to be established as a result of the measures taken, in line with Article 27(4) of the CPR and fund-specific rules.

EE	If funding is transferred between priority axes to boost TO1 for the purposes of tackling the corona virus, it will reduce allocations for other priorities and actions, which is likely to impact the achievement of the targets set for those other priorities at the end of the programming period. How will this be managed at closure, if there is no corresponding revision of the targets of the “donor” priorities? In case measures related to the corona virus outbreak are added to the OP, should there be output and result indicators with targets suggested or may this stay without such elements (as not all investments must have indicators)?
FR	Sur la facilité donnée à la révision, au-delà même du seuil de 8%, je comprends que nous pourrions transférer d’un axe à l’autre sans autorisation de la CE. Mais faudra-t-il, quand même, modifier nos indicateurs, notamment du cadre de performance? Ou bien, on modifie notre maquette et, si c’est en dessous du seuil, on ne touche pas au reste ? En tout état de cause, j’imagine qu’il faudra quand même faire valider par le comité de suivi
BG	Could Performance framework targets be reduced/amended in the OP due the force majeure situation with COVID and the slowdown of projects implementation?

From 2020 until 2023 (included), the managing authorities shall submit to the Commission only so called “light” annual implementation report, i.e. only Part A of AIR template (data required every year) should be filled in (see Article 50(2) of Regulation (EU) No 1303/2013). An optional Section 14.4 of Part B on the OP contribution to macro-regional strategies and sea basin can be filled in, where appropriate.

(See: Questions and Answers on AIR https://ec.europa.eu/regional_policy/en/information/legislation/guidance/)

HR	Are any changes envisaged to the AIR 2019 template compared to the 2018 one?
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In accordance with point 5 of Annex II CPR on the method for establishing the performance framework, Member States may, in duly justified cases, such as a significant change in the economic, environmental and labour market conditions in a Member State or region and in addition to amendments resulting from changes in allocations for a given priority, propose the revision of milestones and targets for the indicators in the performance framework in accordance with Article 30 CPR.

There are therefore **2 situations** in which the values for indicators in the performance framework can be reviewed [\[1\]](#) :

- **in duly justified cases:** including if the significant change made it impossible to achieve a target, the Member State may propose the revision of targets. Based on the first estimations of the impact of the Coronavirus crisis on the European economy, it is expected that the condition for amending the targets in the performance framework will be met. However, if the revision aims only to align targets with actual performance, this would not be regarded as a due justification.
- **In case there are changes in the budgetary allocation to a priority:** programme amendments changing the financial resources in a priority to address the current crisis will therefore also justify an amendment of the values for the targets.

For all indicators both in the PF and outside, in case of modifications to the target values for indicators or selection of new indicators resulting from measures taken to address the current COVID-19 outbreak, including within the context of the CPR amendment proposal, the Member State will need to provide the rationale (e.g. referring to the COVID-19 related crisis) for the adjustment of the target values for indicators or for the selection of new indicators and their related targets.

In accordance with Article 4(3) and (4) of Regulation (EU) No 215/2014, the information on the methodologies and criteria applied to select indicators for the performance framework and to fix corresponding milestones and targets recorded by the bodies preparing programmes has to be made available at the request of the Commission.

Concerning EU co-financing, the rates set out in Article 120(3) CPR apply. The Commission did not propose a change to the co-financing rates to avoid lowering the overall investment potential of the programmes.

[\[1\]](#) See also the Guidance for Member States on the performance framework, review and reserve.

UK	Will the Commission consider flexibility in relation to achievement of overall programme targets to reflect the unique circumstances we are in as well as a temporary relaxation in match funding requirements, at least during 2020?
PL	Will the EC services allow deviations from the values of indicators assumed in projects and programs?

CRII - general

The “shall” in this context indicates that such expenditure (where it exists) is eligible from 1 February 2020. It does not mean that such expenditure is compulsory nor that remaining ESI funds should be used for investments related to the ongoing emergency: it is up to the Member State to decide to make use of the extended eligibility under Article 1, and of the flexibility under Article 2 (1) and (2) of the CRII proposal.

However, amounts not recovered from the accounts submitted in 2020 are additional liquidity that shall be specifically used to accelerate investments related to the COVID-19 outbreak and are eligible under the CPR and Fund specific rules.

BE	For OPs that already have an earmarking rate (budget commitment) of 100 % of the funds, would there be an obligation to reallocate part of the commitment budget (to the detriment of existing projects) in order to take specific measures related to CRII in the framework of the OP with the additional liquidity that will be available in 2020
DE	Please confirm, that the use of the Coronavirus Response Investment Initiative is optional. The MS have no obligation to modify ERDF programmes.
NL	Is it obligatory to use the remaining ESIF for COVID-19 related investment? Mr Koopman said in the Taskforce call it is voluntary, but the regulation says ‘shall’. Please clarify <i>[In Article 65(10), the following subparagraph is added: “By way of derogation from paragraph (9), expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020.”]</i>
FR	La CE propose d’intégrer les investissements en matière de santé dans l’OT 1b pour les PO qui n’ont pas mobilisé l’OT 9. Est-ce que l’Autorité de gestion a le choix entre l’OT 1b et l’OT 9? Les PO Aquitaine et Limousin ont l’OT 9 prévu dans le PO, est-ce que cela veut dire que l’AG doit obligatoirement mobiliser l’OT 9?

The legislative framework for the implementation of operational programmes remains fully applicable. Consequently, eligibility rules set in Article 65(2) CPR apply and therefore the final date of eligibility is 31.12.2023.

PL	What will be the timeframe for implementation of projects by hospitals related to COVID-19 crisis? Also 31.12.2023?
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Article 30(5) CPR

The revised Article 30 of the CPR Regulation (Regulation (EU) No 1303/2013) will provide for the possibility for programmes supported by the ERDF, Cohesion Fund and ESF, to transfer an amount of up to 8% of the allocation, as of 1 February 2020, of a priority, and no more than 4% of the programme budget, to another priority of the same Fund in the same programme. Such transfers will be considered as not substantial and will not require a decision of the Commission amending the programme. These transfers shall not affect previous years, must comply with regulatory requirements and be approved in advance by the monitoring committee. The Commission should only be notified of the revised financial tables.

The Commission will apply all the flexibility allowed for within the current limits set by the CPR and the CRII.

As far as transfers between categories of regions is concerned, current provisions under the CPR apply. More specifically, Article 93 (2) CPR allows, in duly justified circumstances, to transfer up to 3 % of the total appropriation for a category of regions to regions in other categories including “in a major revision of the Partnership Agreement”. These transfers will need to be reflected in the annual update of the Partnership Agreement, as set at Article 16(4a) CPR. The Commission will ensure a quick assessment of any proposals to that end.

Indeed the CRII proposal adds flexibility for transfers within the limits set out in Article 30(5) of CPR and these shall not require a decision of the Commission amending the programme.

As far as other regulatory requirements, such as thematic concentration, are concerned, the CPR provisions and funds-specific rules still apply. Nevertheless, the Commission will apply all the flexibility allowed for within the limits set by the CPR and the CRII, in particular thanks to the enlargement of thematic objective 1 to investments necessary for strengthening the crisis response capacities in health services.

BE	Belgium advocates the greatest possible flexibility. It is indeed important that measures can be implemented where necessary. In this context, it should also be possible to consider transferring funds between categories of regions.
BE	In that framework, could the Commission confirm what has been said in SMWP about giving as much flexibility as possible and to encourage the MS to negotiate about what is feasible with the geographical desk?
PL	Does the EC allow greater flexibility in transferring funds between categories of regions?
LT	Is it possible to transfer between the Funds - from ERDF, CF to priorities financed by ESF? What are the limits?
HR	Possibilities for reallocation of funds within the OP, proposed 8%/4%

Art 30(5)CPR is proposed to provide more flexibility in addressing the COVID-19 outbreak (please see the recital 5 of the proposal COM(2020)113), the main idea being indeed to provide more flexibility to MS with a view to addressing the consequences of the COVID outbreak. However, the transfer possibility is also open for other transfers.

It should be noted that the procedure in Art 30(5) CPR only applies to the ERDF, the CF and the ESF; as regards the EMFF, for possible measures in relation to COVID-19 outbreak crisis alleviation and simplified procedure of OP amendments, MS should consult the fund specific regulation.

DE	Please confirm that the new Art. 30(5) CPR applies to all possible transfers, not only for transfers regarding investments related to the COVID-19 outbreak.
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Indeed the CRII proposal adds flexibility for transfers within the limits set out in Article 30(5) of CPR and these shall not require a decision of the Commission amending the programme.

As far as other regulatory requirements, such as thematic concentration, are concerned, the CPR provisions and funds-specific rules still apply. Nevertheless, the Commission will apply all the flexibility allowed for within the limits set by the CPR and the CRII, in particular thanks to the enlargement of thematic objective 1 to investments necessary for strengthening the crisis response capacities in health services.

UK	Can the Commission consider a higher programme allocation threshold in this measure and a short-term derogation from the thematic concentration levels? The amendment to Article 30 of CPR, permits moves of up to 8% of the allocation as at 1/2/20 at priority level to another priority, up to 4% of the programme allocation without a Commission decision. This will speed up changes needed to react to the circumstances. However, it may not be substantial enough and its impact may be less because all other regulatory requirements will still need to be met, including PA thematic concentration levels.
PL	To which extent thematic concentration should be respected when reallocating ERDF between TOs? Is there any relaxation of the rules in this respect, taking into account the limited possibilities of reshuffling allocations at this moment of OPs lifecycle, when the majority of funds is already contracted.
LT	Due to the critical situation in public health and employment sector the amount of funds needed under TO9 increased drastically. Redistribution actions cannot be taken due to the ERDF thematic concentration limitations. What is your opinion on the issue and whether it is possible to expect lower ERDF thematic concentration requirements (for instance 10 percent point) in order to provide necessary financing to the health and employment sectors?
PL	Will there be any changes in terms of thematic concentration?
IT	Considering the capping to the transfers of resources within the programme set by the proposed regulation regarding the Coronavirus Response Investment Initiative, what kind of solution does the Commission envisage in order to guarantee a wider flexibility in the transfer of resources towards measures addressing the health crisis, allowing to make such transfers by way of derogation to the thematic concentration rules for both for ERDF and ESF regulation?

The limits for transfers without OP amendment included in the CRII (Article 30(5) CPR), apply to transfers between priorities of the same Fund of the same programme. Such transfers affect the OP financing plan. The proposed limit, transfer of no more than 8% of the allocation to the priority as approved by the Commission as of 1 February 2020 of no more than 4% of the programme budget, does not apply to the transfers between specific objectives within the same priority as such transfers do not affect the OP financing plan.

CZ	Do the transfers between the specific objectives inside one priority axis also count for the 4% limit? We believe it is not the case (but it is connected to the previous question).
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The Commission has proposed a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy to respond flexibly to the rapidly emerging needs in the most exposed sectors. Art 30(5)CPR is proposed to provide more flexibility in addressing the COVID-19 outbreak (please see the recital 5 of the proposal COM(2020)113). Therefore, the main idea is indeed to provide more flexibility to MS with a view to addressing the consequences of the COVID-19 outbreak. However, the transfer possibility is also open for other transfers.

FR	Do the flexibility measures proposed to facilitate transfers between priorities (modification of Article 30 (5)) apply only within the framework of the implementation of CRII or could they be used without condition of link with funding for COVID-19 measures?
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The proposed Article 30(5) CPR allows to transfer amounts within the limits set out in this provision, applicable to the allocation of the priorities of the programme as approved by the Commission as of 1 February 2020. These transfers shall not affect previous years, i.e. changes to the financial plan can only be made for the 2020 instalment.

Regarding pre-financing amounts, in accordance with the proposed amendment to the Article 139(7) CPR, the recoverable amounts for the accounts submitted in 2020 will not be recovered by the Commission and shall be used to accelerate investments related to the COVID-19 outbreak and eligible under CPR and Fund specific rules.

DE	The new Art. 30 (5) refers to the allocations as of 1 February 2020. Does this refer to the entire financing plan 2014 to 2020, the 2020 annual instalments or the annual pre-financing amount?
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The CRII proposal allows for transfers to another priority of the same Fund of the same programme without OP amendment, as long as the limits laid down in proposed Article 30(5) CPR are respected. The proposed limits are to be understood as per priority: an amount from a priority can be transferred to another priority under the same Fund and within the same programme if the transferred amount corresponds to up to 8% of the allocation of the outgoing priority or up to 4% of the total programme allocation. The MS shall apply the limits set by the proposed Article 30(5) CPR to the allocation of the priorities of the programme as approved by the Commission as of 1 February 2020. These changes have to be notified to the Commission. Changes going beyond these limits would require a Commission decision.

Furthermore, it is reminded that it is possible to make transfers between the ERDF and the ESF subject to Commission approval. This is possible as the Common Provisions Regulation does not determine the split between the ERDF and the ESF. It only contains an aggregate amount for the ERDF and the ESF by category of region. However, for the ESF each MS needs to ensure that the ESF minimum share is respected, i.e. the allocation to the ESF cannot be lower than the amount that is determined in accordance with the methodology set out in Article 92(4) and Annex IX CPR. For the ERDF there is no minimum share. It is therefore possible to make transfers between the ERDF and the ESF as long as the ESF minimum share is respected. However, these transfers cannot concern previous years. They are limited to the 2020 allocation. Furthermore, the related programme amendment needs to be approved by the Commission still in 2020.

Transfers can also be made between programmes (either concerning the same Fund or between the ERDF and the ESF), but such transfers will be limited to the 2020 allocations and these programme amendments need to be approved by the Commission in 2020.

EE	How should the transfers be calculated? What is the correct interpretation: 1) 4% of the amount of the programme could be added to all/several priorities 2) 4% of the amount of the programme is the total sum of all transfers between funds?
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The MS shall apply the limits set by the proposed Article 30(5) CPR to the allocation of the priority axes of the programme as approved by the Commission as of 1 February 2020. These changes should be notified to the Commission. In case an OP amendment is planned to be submitted through SFC for Commission approval and is already under MC scrutiny, it is recommended that it is consistent and includes the transfers applied in accordance with Article 30(5).

PL	The reference day for calculation of the allocation is 1 February 2020, so the MA should use as the basis for calculation of 8% the allocation before the modification as the modification is with the MC and not yet submitted in SFC, is that correct?
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In accordance with Article 60(1) and Article 120(1) CPR, the co-financing rate and the maximum amount of support from the Funds for each priority axis are fixed with the Commission decision adopting an operational programme. Consequently, to change the co-financing rate of a priority axis, an OP amendment will be necessary in accordance with Article 30(1) and (2) CPR. However, if there is a transfer, based on proposed Art 30(5) CPR, between priorities with different co-financing rates, the co-financing rate of the receiving priority will be applied to the transferred amount and it does not constitute a change in the co-financing rate on a priority level.

Additionally, modulation of co-financing rates is allowed at operation level, as long as the co-financing rate set up for the relevant priority axis is respected at the priority axis level.

EE	If funding is transferred between priority axes, may the share of the EU contribution rate also be changed without the Commission's decision, provided that the maximum limit in the CPR will still be respected (85% in our case)?
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Article 139(7) CPR

In line with the revised Article 139(7) of the CPR, supported by recital 8 of proposal COM(2020)113, the Commission will not issue a recovery order for amounts recoverable from the Member State for the accounts submitted in 2020. Amounts not recovered from the accounts submitted in 2020 shall be used to accelerate investments related to the COVID-19 outbreak and eligible under this Regulation and Fund specific rules. This includes investments in the health sector as well as investment to sustain the economic activity in order to mitigate the economic consequences of the health crisis.

BE	Can the Commission confirm that the use of the liquidity provision is compulsory? Or can we partially or totally refrain from using CRII?
FR	Within the framework of the CRII, concerning the liquidity made available following the non-repayment of pre-financing, must it necessarily finance support measures linked to the COVID-19 epidemic?

DE	There is no obligation to use the amounts not recovered for “special” measures related to the COVID-19 outbreak. Modifying the operational programme is optional.
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The proposed additional subparagraphs to Article 139(7) CPR derogate from the first subparagraph of that Article, to relinquish this year the Commission’s obligation to request refunding of unspent pre-financing for European structural and investment funds from the Member States. These are the amounts that shall be exclusively used to accelerate investments related to the COVID-19 outbreak and that are eligible under the CPR and Fund specific rules.

FR	In this regard, can the Commission clarify the legal interpretation of paragraph 5 article 2 of the draft regulation, amending article 139 (7) of regulation 1301/2013, and in particular the link between the two sentences "By way of derogation from the first subparagraph, the Commission shall not issue a recovery order for amounts recoverable from the Member State for the accounts submitted in 2020. Amounts not recovered shall be used to accelerate investments related to the COVID-19 outbreak and eligible under this Regulation and Fund specific rules. "?
DE	The money will be considered as “special” in the following accounting year and will not be considered as interim payments or pre-financing as declared in Art. 139 (6b). The MS will not have to reimburse the money in the accounting of the following accounting year. Thus, the Member States will have time to the end of programme closure spending the amounts.

The existing reporting obligations for MS and monitoring rules for the Commission apply. The amount of pre-financing at stake will be cleared at closure, on the basis of the eligible expenditure declared to the Commission.

FR	If the mobilization of liquidity should necessarily support measures linked to the COVID-19 epidemic, how will the Commission ensure the monitoring and control of this obligation?
DE	The calculated amount to be recovered by the Member State related to accounting year 2018/2019 will stay as a matter of routine on the bank account of the Member State, no additional report or submission of any additional information is necessary?

Financial instruments - Article 37(4) CPR (see also ERDF section)

Financial instruments under proposed Article 37(4) could be used to provide adequate liquidity or short-term financing for companies (including bank guarantees), as such liquidity support is within the scope of ‘working capital’ referred to in the proposed provision. Working capital could also be supported from ERDF through the other forms of financing, namely grants and repayable assistance - see reply to your other question on ‘*Can grants or repayable assistance be used for working capital?*’.

Working capital has already been defined in the financial instruments context (see: [EGESIF 14_0041-1](#)), and it could be understood broadly, as the difference between current assets and current liabilities of an enterprise – which is synonymous with liquidity. Categories of expenditure for which the working capital could be used may include, amongst others, the funds required to pay for raw materials and other manufacturing inputs, including labour; inventories and overheads; rent, utilities; funding to finance trade receivables and non-consumer sales receivables.

For financial instruments, working capital support has already been eligible since the beginning of the programming period, if justified by ex ante assessment. The Commission recommended that the support to enterprises to finance working capital facilities would be expected generally to have a maturity of at least two years (notwithstanding shorter maturities on a revolving basis). This type of support continues to be eligible.

The proposed new provision in Article 37(4) extends the eligibility of working capital support, irrespective of its maturity, provided that final recipients are **SMEs**, such support is **necessary** as a temporary measure to provide an effective **response to a public health crisis** and if such support is **covered by the priority axis**.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this must be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. **Working capital does not have to be explicitly mentioned in the description of the priority axis**, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible from 1 January 2014.

In case the programme needs to be amended to extend eligibility to cover the working capital, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to the public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures. Please refer to specific QA document concerning programme amendments which would help guide you through the process if needed.

DE	<i>Does Article 37(4) CPR amendment allow also under the „working capital“ to ensure the adequate liquidity or short-term financial instruments for companies (including bank guarantees)? In Article 37(4) on financial instruments it is added that financial instruments may also provide support in the form of working capital to SMEs if necessary as a temporary measure to provide an effective response to a public health crisis.</i>
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Programme amendments

The word “priority” should be understood as “priority axis” in the context of the cohesion policy. In accordance with Article 2(8) CPR, “priority” means “priority axis” for ERDF, ESF and the Cohesion Fund in Part Two and Four of the CPR. Article 30 CPR is in Part Two.

CZ	With respect to Art. 2, para 1 of the CRII regulation, how exactly should we interpret the word "priority" - is it a priority axis or investment priority? It does not have the same meaning in the context of the operational program OP EIC (Enterprise and Innovations for Competitiveness) and it is crucial to meet the limits. The Common Provisions Regulation (CPR) usually works with the concept of priority axis, and the financial tables of OP EIC are set accordingly.
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The possibility to submit a request for an amendment of a programme in accordance with Article 30(1) CPR, remains available to the MS. I.e. it is always possible to request a “standard revision” of the OP, subject to approval of the monitoring committee in accordance with Article 110(2)(e) CPR, and of the Commission in accordance with Article 30(2) CPR.

The flexibility offered to re-programme without Commission decision (by Article 30(5) CPR from the Commission proposal COM (2020) 113) can be used in case the MS quickly needs to shift the funds within the limits laid down in the proposed provision. Meanwhile, the MS can prepare an amendment request on the elements reaching beyond the scope of the proposed Article 30(5) CPR.

It should be noted that the procedure in Art 30(5) only applies to the ERDF, ESF and CF; the EMFF has its own simplified procedure.

CZ	Does the adoption of the CRII mean that besides this simplified revision method it is not advisable/possible to make a standard revision of the OP? For example, would it be possible to make a revision that would exceed the set limits, deal with the OP text/wording, etc.?
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Support for working capital can be provided either under an existing priority axis or through a new priority axis, including under a dedicated priority axis for the SME Initiative implemented in line with Article 39 CPR.

Such support can be provided in the form of a financial instrument (existing or only to be set up), repayable assistance or a grant.

The steps to be taken depend on the already existing support and specific priority axis, hence the reply:

- first addresses the conditions under which an OP amendment might be required,
- then discusses the different form of financing which could be used to support working capital,
- and in the end provides suggestions how to approach support in the form of financial instruments in 2 situations:
 - where the financial instruments already supports working capital and the *ex ante* assessment already has been conducted;
 - for financial instruments which are going to be set-up, or which already exist but need to refocus their scope of support to add working capital.

Only certain aspects of OP amendment procedures, linked to **timing of submission needed to ensure eligibility of the new scope introduced by such amendment**, are discussed here. For more specific questions concerning amendments, Article 30(5) as well as issues related to retrospective financing, please refer to specific replies on those topics.

1) Conditions under which an OP amendment might be required

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there might not be any need to modify the OP, but this needs to be verified in each specific case as programme-specific conditions might require extending the scope of support in order to cover such new actions. Working capital does not have to be mentioned explicitly to be eligible, but should fit into the scope of priority axes and types of projects.

In case the programme needs to be amended to extend eligibility to cover the new scope, expenditure for operations fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020. This also applies to working capital granted to SMEs to provide an effective response to a public health crisis. The necessary programme amendment may be adopted later, without delaying deployment of measures.

If the support for working capital fits into the scope of the priority axis under the current version of the OP, there would not be any need to modify the OP, but this needs to be verified in this specific case, as programme-specific conditions might require extending the scope of support in order to cover such new actions. Neither working capital nor the specific cost items have to be explicitly mentioned in the description of the priority axis, but should fit into the scope of priority axes and types of projects. In such a case, expenditure is already eligible from 1 January 2014.

In case the programme needs to be amended to extend eligibility to cover the working capital, expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020. **This also applies to working capital granted to SMEs to provide an effective response to the public health crisis.** The necessary programme amendment may be adopted later, without delaying deployment of measures.

2) General rules depending on the form of support for working capital

The proposed new provision in Article 3(1) ERDF Regulation makes it possible to support working capital using all forms of financing:

- **For financial instruments** : financing of working capital in SMEs in the form of financial instruments has been eligible for support from the beginning of the 2014-2020 period.

Hence, if the additional support in response to the current crisis is to be provided under the same priority axis where financial instruments supporting SMEs, including with working capital, have been already envisaged, no OP amendment would be needed, unless the priority axis includes conditions restricting such support which would be now proposed to be relaxed in response to the COVID-19 crisis.

In some cases however, an **updated or new ex ante assessment** in line with Article 37(2) CPR could still be needed to estimate the level and scope of public investment *before* the managing authority takes the formal decision to make additional programme contributions to the financial instrument. This requirement should not delay deployment: such an analysis should be very focused and short in length and it does not have to be outsourced. It could be conducted by a competent public authority and could refer to national and EU documents already being published in a broader context, which already provide key elements to justify market failure and the current COVID-19 crisis situation. Managing authorities could also use national promotional banks or institutions and already functional fund of funds managers to draft such new/updated ex ante assessment. Specific rules would be applicable in case of the SME Initiative implemented under Article 39 CPR.

Funding agreements/investment strategies may be adjusted as necessary to allow a potential re-focus of the existing FI (if not covered already) to address the investments needed to respond to the crisis (funding agreements might already include provisions which would trigger revisions of investment strategies in case of situations like this).

- **For grants and repayable assistance** : Selection criteria would need to be approved by the monitoring committee. For grants /repayable assistance, there is no legal basis for a requirement to prepare an ex ante assessment within the meaning of Article 37(2) CPR.

Please note that the modification does not affect EAFRD, where working capital remains eligible only in relation to investments supported by the rural development programmes, in accordance with Article 45(5) of Regulation 1305/2013.

3) Financial instruments that already support working capital

For existing financial instrument already providing support for working capital, changes in ex ante assessment should be introduced only if really needed, be as short as possible and concern only those elements that h are significantly modified. There is no need to update every part of the ex-ante assessment if in the past it was already justifying supporting working capital.

The focus should be on the investment strategy and the *ex ante* assessment should be updated only if/as needed, based on the results of the review of investment strategy, without producing any additional documents.

The process of the **update** could follow the following path:

- Discuss with the body implementing the financial instrument (e.g. national promotional institution/EIB/EIF), which the identified needs are on the market responding to the public health crisis and whether the current financial instrument can responds to these needs in terms of volume and strategy;
- If the needs are no longer met in terms of volume, and you decide to provide additional financing, this is the basis for short amendment to the ex-ante assessment and taking the formal decision to contribute more funds in line with Article 37(3) CPR;
- If the volume is not changed, but the specific market needs require an adjustment in terms of the investment strategy, decide with the body implementing the financial instrument (e.g. national promotional institution/EIB/EIF) if/what needs to be changed. If significant elements of the investment strategy needs to be changed, it may be necessary to update the ex-ante and/or amend the OP (e.g. if support in the form of grants is also needed). If there is only a need to change slightly the investment strategy, then there is no need to update the ex-ante assessment, nor to amend the OP.
- Finally, any changes resulting from the decisions made under points 2) and 3) are introduced in the funding agreement and subsequently in the (loan/guarantee/etc.) relevant agreements downstream between the body implementing the financial instrument and any specific funds, if needed.

4) Financial instruments that need to be set-up or re-focused on working capital.

In case of new financial instruments to be set-up as a response to the public health crisis or of existing financial instruments that need to be re-focused, an ex ante assessment in line with Article 37(2) CPR is needed to estimate the level and scope of public investment in regard to the public health crisis, before the managing authority takes the formal decision to make programme contributions to the financial instrument.

However, this requirement should not delay deployment: such an analysis should be very targeted and brief and it does not need to be outsourced.

The following table includes a short description of how to fulfil the requirements for every element required under Article 37(2) CPR. The focus, as in the case of existing financial instruments, should be on the proposed investment strategy referred to in Article 37(2) (e).

Element of ex ante assessment required under Article 37(2)		How to address
a)	an analysis of market failures, suboptimal investment situations, and investment needs for policy areas and thematic objectives or investment priorities to be addressed with a view to contributing to the achievement of specific objectives set out under a priority and to be supported through financial instruments. That analysis shall be based on available good practices methodology	It is sufficient to refer to Commission's communication ' <i>Coordinated economic response to the COVID-19 Outbreak</i> ' COM(2020) 112 final
b)	an assessment of the added value of the financial instruments that are being considered for support from the ESI Funds, consistency with other forms of public intervention addressing the same market, possible State aid implications, the proportionality of the envisaged intervention and measures to minimise market distortion	It is sufficient to refer to Commission's communication ' <i>Coordinated economic response to the COVID-19 Outbreak</i> ' COM(2020) 112 final
c)	an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and the extent of, differentiated treatment as referred to in Article 43a to attract counterpart resources from investors operating under the market economy principle and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment, such as a competitive or appropriately independent assessment process	Unless differentiated treatment of investors is needed, a conservative own estimate is sufficient; given the current constantly changing situation and uncertain overall economic outlook accurate estimates are not possible. This element is non-binding and could be later updated in line with market developments.
d)	an assessment of lessons learnt from similar instruments and ex ante assessments carried out by the Member State in the past, and how such lessons will be applied in the future	It is sufficient to invoke exceptional nature of the current crisis to justify lessons learned might not be applicable

e)	the proposed investment strategy, including an examination of options for implementation arrangements within the meaning of Article 38, financial products to be offered, final recipients targeted and envisaged combination with grant support as appropriate	This should be the focus of the analysis and could be prepared with the body implementing the financial instrument or by another responsible public body. The document should avoid unnecessary details, given the uncertain situation and the investment strategy may be updated later anyway, without the need to change the <i>ex ante</i> assessment
f)	a specification of the expected results and how the financial instrument concerned is expected to contribute to the achievement of the specific objectives set out under the relevant priority including indicators for that contribution;	It is sufficient to specify that the expected result is ensuring sufficient liquidity for SMEs to address the losses due to the crisis (where applicable: with special attention on sectors which are particularly hard hit). Number of enterprises supported through financial instruments could be used as the required indicator.
g)	provisions allowing for the ex ante assessment to be reviewed and updated as required during the implementation of any financial instrument which has been implemented based upon such assessment, where during the implementation phase, the managing authority considers that the ex ante assessment may no longer accurately represent the market conditions existing at the time of implementation	Appropriate arrangements as decided by MA. Given the dynamically changing situation, the remaining part of the assessment should not include too many details to avoid too frequent revisions.

BG SI HR	Amendment of Article 3(1) of the ERDF Regulation to support pure working capital is part of the Commission proposals. What steps are needed in order to implement working capital for SMEs? Is an OP modification required or does this situation allow for quick deployment of measures and a subsequent OP modification ? What about the funding agreement / investment strategy ?
CZ	If we transfer financial resources to a financial instrument to support the working capital – do we need to run a new ex ante analysis ? (For the reply see sections 3 and 4.)
EE	The CPR requirement for ex-ante assessment of financial instruments has not been modified . Does this apply also in cases of working capital in a crisis context? If yes, please reconsider. (For the reply see sections 3 and 4.)
PL	FIs - does ex-ante assessment need to be updated? In our view this would be contradictory to the urgency of the matter and given that the eligibility scope is changing? (For the reply see sections 3 and 4.)
PL	The wording of the scope of the loan and guarantee funds in the OP. This would have to be modified in the text of the OP, which is rather cumbersome. We would propose an exchange of e-mails or letters confirming MA can go ahead with what they propose, and that the wording would be changed in the next OP modification. (For the reply see section 1.)
SI	Financial instruments: does ex-ante assessment need to be updated? In our view this would be contradictory to the urgency of the matter and given that the eligibility scope is changing. (For the reply see sections 3 and 4.)
SI	Due to the fact that existing financial instrument operation consists also of measures for SMEs and due to urgency of the matter, would it be possible to engage/redirect also existing FI (also from areas like energy efficiency) instruments to SME support (working capital) before CPR, OP amendment and modification of operation – all of this would be done ex post? REGIO+ (ECFIN?) Member State must be able to implement the measures it deems necessary to combat the coronavirus. It is essential for the Commission to clarify the types of measures envisaged, particularly as regards aid to the SMEs which will be mainly affected. (For the reply see section 1)
DE	Can existing financial instruments be amended in a way to include the support of working capital? Does this require a formal programme amendment? Does this require an additional ex-ante assessment for the amended financial instrument?

The question concerns the modification of EU co-funded programmes in order to reallocate funds for fighting the coronavirus health emergency, for instance to give support for SMEs to survive the crisis or to support health measures.

The SEA Directive contains a provision that covers emergency situations and that could be applied to the emergency situation of the coronavirus crisis. Article 3.8 of the SEA Directive lays down:

“The following plans and programmes are not subject to this Directive:

— plans and programmes the sole purpose of which is to serve national defence or *civil emergency*,”

Civil emergency can be understood as including measures to address the coronavirus crisis. Hence, modifications of programmes introducing *solely* measures linked to coronavirus crisis could be exempted of the application of the SEA provisions. This means that modifications of programmes proposed later, once the coronavirus crisis is over, should not be covered by this derogation and should not be understood as civil emergency.

In that respect, the Coronavirus-crisis can be seen as a civil emergency within the meaning of Art. 3(8) of the SEA Directive, see also the Commission staff working document ‘Overview of Natural and Man-Made Disasters and Risks the European Union may face’, SWD(2017) 176 final, p. 33 on Pandemic. https://ec.europa.eu/echo/sites/echo-site/files/swd_2017_176_overview_of_risks_2.pdf

In addition, in line with what is indicated in the joint letter (attached) sent in 2011 by DG REGIO and DG ENV on the application of the SEA Directive to the modifications of the ESIF programmes, if a modification simply re-allocates funds to an existing measure or if a modification has already been covered by the SEA carried out for the original programme, such modifications should be treated as budgetary or financial modifications that do not affect or modify the physical content of the programme. The letter clarifies that for such modifications the SEA is not applicable and a statement of the managing authority is sufficient. In concrete terms, if the modification of a programme reallocates funds to existing measures/axis on SMEs, such a modification can be considered as budgetary or financial modifications and it does not require the application of the SEA Directive. I reattach the 2011 note on modifications of programmes for your information.

Consequently, the SEA Directive offers the necessary flexibility to respond to exceptional situations such as the Coronavirus crisis. In all cases, the managing authorities should explain clearly the reason/scope of the modifications.

CZ	Either not to have to run SEA or to enable to provide SEA screening additionally.
SK	Is it necessary to review changes to the OP, carried out in connection to COVID-19 prior to their approval in accordance with SEA Directive (or transposed Slovak legislation SR)?

At first, it should be clarified that the use of both the reallocation of funds between priorities (proposed Art.30 (5) CPR) and eligibility of expenditure as of 1 February 2020 (proposed Art. (65(10) CPR) for COVID -19 investments is not mandatory; it is a flexibility provided to Member States to address, should they wish so, the COVID-19 outbreak. This means that Member States have the option of using or not the above flexibilities.

Second, there is no provision in the CPR forbidding over-programming; Member States could, in line with national rules, in the case of the EAFRD without prejudice to future fund-specific transitional rules, consider this possibility of taking into account the stage of implementation of operations already programmed or selected and currently under implementation.

For operations which are selected and for which grant agreements have already been signed, Member States may at a later stage reconsider their options depending on the stage of implementation of such operations: for example:

- it may be possible to phase these projects if they comply with the conditions for phasing in accordance with the rules of the 2021-2027 programming period as these will be further explained in the closure guidelines to be soon presented to Member States.

- It could also be possible that the operation can be split into two separate operations (thus not phased). In this case, the Member State could amend the operation in accordance with national rules so that the part of the operation completed is considered to be a standalone operation (of a reduced scope and funding), funded under 2014-2020 programming period, and the part non-completed supported under the 2021-2027 programming period. The operation transferred to the new programming period should comply with all applicable rules for the 2021-2027 programming period.

- In other cases, if operations were selected but were not implemented, it could be possible to transfer and support them under the 2021-2027 programming period provided that they are eligible for co - financing and comply with all applicable rules under the 2021-2027 programming period.

Finally, the specific provision of Art. 137(9) CPR only regulates the specific case of pre-financing amounts recoverable from the Member States. In such case, the additional liquidity should be used for the purpose of accelerating investments related to COVID-19 outbreak and eligible under Regulation (EU) No 1303/2013 and Fund specific rules.

NL	What does this mean for the running ESIF programmes? Especially in case programme budgets have already been fully committed to operations (as is the case for ESF)?
FR	Les régions qui ont déjà contractualisé la totalité de leur enveloppe 2014-2020 sont-elles éligibles au dispositif ? Pourront-elles sur-programmer ? (Are the regions which have already contracted the entire 2014-2020 envelope, eligible for the scheme? Will they be allowed to over-program?)
DE	How should the amendment to Article 139 (7) of Regulation (EU) No 1303/2013 be applied to operational programmes that have already been almost completely approved? If appropriations are already committed with legal force, they cannot be transferred to new investment priorities
MS	In case projects are shifted to 2021-27 in order to free resources for corona crisis measures, there are questions of eligibility related to the starting date of the new programmes.
FR	Dossier programmé et démarré en 2014-2020, mais non achevé en 2022, qui pourrait être rattaché et se terminer sur 2021-2027 ? Dossier programmé en 2014-2020, qui n'a pas pu démarrer en 2020, qui pourrait être directement rattaché à la programmation 2021-2027 ? Dossier déposé en 2020, éligible, mais pas sélectionné ni programmé, pour crédits insuffisants, qui pourrait être directement programmé en 2021-2027?

The exception to the decommitment to be invoked in this case if need be, will follow the standard procedure of Article 88 CPR. There is no need to submit any information at this stage: the relating information invoking the force majeure exception should be submitted to the Commission by 31 January of the year following the one for which there would be a de-commitment, in accordance with Art. 87 (2) CPR. as is always the case.

RO-HU-ETC	<p>In the context of the current crisis, we already started to receive feedback from various projects about their intention to suspend their operations. Therefore, we would have a question in relation to the application of the art 87 of the Regulation 1303, respectively if the MS should notify COM of the force majeure:</p> <ul style="list-style-type: none"> -from the very beginning (when the crisis starts), or -the notification should be submitted at the end of the year, when clear data/figures will be available.
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Article 87 (1) (b) CPR provides for the exception to decommitment: it is a derogation to the general rule of decommitment expressed in Art. 86 (1) CPR. In this respect it should not be considered as a flexibility provision but should be interpreted strictly. In line with this Article, if the Member State has not been able to make a payment application due to force majeure which seriously affected the implementation of the programmes, such amount will be deducted from the amount concerned by decommitment. Direct impact of force majeure on programme implementation has to be established.

In Union law, the notion of 'force majeure' [\[1\]](#) generally presupposes circumstances which a) are abnormal and unforeseeable, b) are beyond the control of the one claiming 'force majeure', and c) could not have been avoided despite the exercise of all due care. For a case of 'force majeure', all three conditions set out by the Court of Justice have to be fulfilled and properly demonstrated. Force majeure is a term of rather restricted scope.

Article 87 (1)(b) is a regulatory provision which applies to all amounts equivalent to the part of budget commitments for which it has not been possible to make a payment application and does not only concern specific amounts relating to investments targeting COVID outbreak.

Regarding 2020 commitments, in line with Article 136(2) CPR, the part of commitments still open on 31 December 2023 will be decommitted if any of the closure documents referred to in Article 141(1) CPR has not been submitted to the Commission by the regulatory deadline.

Article 87 (1) CPR does not allow for an extension of the end date for eligibility period stated in Article 65 (2) CPR: this means that expenditure may not be incurred by beneficiaries beyond 2023 and until submission of closure documents based on Article 87(1) CPR. Only a reduction of amounts from decommitment for which no payment application was made due to circumstances of force majeure may be applied in the specific conditions stated in Art. 87 (1) CPR.

Please see also the general reply on force majeure.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case [145/85 Denkavit België \[1987\] ECR 565](#) , paragraph 11; Case [C-377/03 Commission v Belgium \[2006\] ECR I-9733](#) , paragraph 95; and Case [C-218/09 SGS Belgium and Others \[2010\] ECR I-2373](#) , paragraph 44

NL	Article 87 of CPR allows for flexibility on force majeure. Does this only apply to the CRII resources or to the ESI-programming as a whole?
LV	Regarding force majeure decommitment exception it is not clear with legal certainty whether the ESIF project expenditure shall be eligible for a contribution from the ESI Funds if it has been incurred by a beneficiary and paid by 31 December 2023 or beyond at least until the submission of closure documents to the Commission in case of covid-19 as force majeure.

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At the end of a year N+3 (and outside the decommitment at closure), a reduction of amounts concerned by decommitment for which no payment application was made could be applied provided that the conditions of Art. 87 (1)(b) CPR are fulfilled. The fact that no payment application could be made due to the specific corona virus outbreak could be regarded as circumstances of force majeure. As this depends on the specifics of the cases at stake it would require an analysis on a case by case basis. The procedure is the one provided in Article 88 CPR.

[1] Case C-99/12 Eurofit SA v Bureau d'intervention et de restitution belge (BIRB) [2013], paragraph 31; Case [145/85 Denkavit België \[1987\] ECR 565](#) , paragraph 11; Case [C-377/03 Commission v Belgium \[2006\] ECR I-9733](#) , paragraph 95; and Case [C-218/09 SGS Belgium and Others \[2010\] ECR I-2373](#) , paragraph 44

MS	Has consideration been given to how 'force majeure' will be taken into consideration a) at the end of the year for N+3 and b) at the end of the programme for the performance framework?
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Public procurement

The Public Procurement directives provide for a full set of different possibilities to tackle efficiently the different urgency situations. In case of extreme urgency, the negotiated procedure without publication could be used if all conditions are fulfilled. However, if this derogation allows contracting authorities to directly negotiate with economic operators, a direct award to a precise economic operator can only take place in situations in which such economic operator is the only able to deliver within the technical and time constraints imposed by extreme urgency.

BG	Is it possible to use direct award procedure targeting a specific sector of the economy, for example hospitals or companies producing pharmaceuticals/protective clothing?
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Directive 2014/24/EU already allows for a significant level of flexibility to address situations of extreme urgency such as this one including reduced deadlines and the use of the negotiated procedure without publication, and a number of exemptions. The selection of financial intermediaries is meant to provide a framework for the disbursement of financial instruments over a longer period and should not be subject to further exemptions.

BG	Directive 24/2014 and, respectively the local Public Procurement Law to allow an exception for selection of financial intermediaries without PPA procedure.
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This option is covered by Article 72 of Directive 2014/24/EU, more precisely Article 72(1)(c). In fact, this provision allows for the modification of contracts when such modification results from circumstances which the contracting authority could not foresee.

BG	Is it possible to delay the execution of contracts under public procurement procedures and extend the deadlines for implementation? Will be there some recommendations?
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Public procurement Directives already allow for significant flexibility, including the possibilities to use accelerated procedures, direct award under very strict circumstances as well as contract modifications. The Commission refers you to its [Communication of 2015 on Public Procurement rules in connection with the current asylum crisis \(COM\(2015\) 454 final\)](#), whose principles also apply in the current crisis. In particular, the Coronavirus crisis may be considered as an extreme urgency situation falling into Article 32 (2) c) of Directive 2014/24/EU provided that all the conditions for its application are met.

BG	Is it possible to apply public procurement rules more flexibly?
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Concerning Public Procurement rules, the Commission refers you to its [Communication of 2015 on Public Procurement rules in connection with the current asylum crisis \(COM\(2015\) 454 final\)](#), whose principles also apply in the current crisis. In particular, the Coronavirus crisis may be considered as an extreme urgency situation falling into Article 32 (2) c) of Directive 2014/24/EU provided that all the conditions for its application are met.

LT	We would like to COM explanation in written for as regards force majeure regime and it implications on management of funds, audits, state aid, public procurement etc.
SI	Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?

As all your questions essentially touch upon modifications of contract clauses on payment, we can answer them all at once.

Provided all conditions are complied with, we are of the opinion that such modifications are perfectly fit to enter the scope of Article 72(1)(c) of Directive 2014/24.

Please note the "unforeseen circumstances" have to have an influence in the execution of the contract. Of course, in the current situation, we can accept a presumption of such an influence in all relevant contracts.

However, we do not see a connection of an emergency situation and Article 72(1)(d).

LT	<p>Could the contracting authority (beneficiary) benefit from Article 72, points (d) and (c) from paragraph 1 of Directive 2014 /24/EU to change the following aspects in the agreement:</p> <ol style="list-style-type: none"> 1) changing payment terms (paying by installments), for example, dividing total agreement price into several prices: (1) for delivered goods (2) for installation, commissioning, training and set separate payment terms; 2) to waive the advance guarantee which is provided for the initial agreement of purchase if it is difficult or impossible for the supplier to obtain such guarantee; 3) include, where justified, an advance payment if it was not provided for the initial agreement of purchase. <p>In these cases, could the contracting authority rely on Article 72, points (c) and (d) from paragraph 1 of Directive 2014/24 /EU?</p>
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Audit

Article 125(5)(a) of the CPR provides for administrative verifications in respect of each application for reimbursement by beneficiaries (desk-based verifications). Member States are encouraged to perform desk-based verifications where possible until such time as it is safe for staff to perform on-the-spot visits again since in the current emergency situation, the Commission understands that on-the-spot verifications are not possible.

Article 125(5)(b) of the CPR provides for the managing authority to carry out on the spot verifications of operations. As far as management verifications are concerned, certifying authorities can already now declare in interim payment applications expenditure which has undergone only administrative verifications (desk checks). On-spot checks by the managing authorities or intermediate bodies under article 125(5)b) of the CPR are done only for a risk-basis sample. Their extent and timing depends on the characteristics of the operation. The Guidance note on management verifications recommends that they should be completed before certification in the accounts (i.e. 15 February 2021). Therefore managing authorities have flexibility also under the current rules to carry out the on-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020.

-Audits by the audit authorities under article 127(1) CPR are done on a statistical sample of operations drawn from the expenditure of the accounting year (i.e. up to 30 June 2020) after this expenditure has been declared to the Commission. As regards current audit work, the Italian audit authorities have received yesterday a letter through SFC2014 (reference Ares(2020)1641010 of 18/3 /2020) from the audit directors of EMPL and REGIO. It is recommended that those audit authorities that have adopted remote working arrangements carry out the audit activities as far as possible through review of documents, including those available via information systems and those that can be submitted electronically by the auditees. Once the emergency is over, the audit authority will be able to assess whether it is necessary to complete the work by visiting the operation on the spot to verify the physical implementation of the project or obtain further clarifications. At that moment, audit authorities should also assess the scope of the activities to be carried out, so that the priorities can be reviewed, in line with the resources and time available, to ensure submission of the annual control report by 15 February 2021.

IT	The Italian authorities envisage certifying expenditures related to the COVID19 emergency in the coming weeks. On the spot audit checks will be impossible to implement in the present circumstances (curfew, health risks). The proposal is then to allow certifying authorities to declare expenditures without on-the-spot checks. Moreover, the Italians welcome any other simplification on the audit side.
UK	Will the Commission consider greater flexibility in terms of management and control systems? (practical implications i.e. travel restrictions)?
LT	force majeure regime and its implications on audits

The crisis does not alter the compliance with applicable rules. Therefore management verifications and audits should continue to verify compliance with applicable rules.

An issue which occurs is the impossibility of doing more than desk verifications and audits at this point in time, and possibly for some time after the crisis until authorities have given the green light for social contacts. See also IT question.

This is not a problem: the regulation sets out that certifying authorities can already now declare in interim payment applications expenditure which has undergone only administrative management verifications (desk checks) and the guidance on management verifications confirms that on-spot checks can be done after the declaration of expenditure and up to the submission of the accounts. Therefore managing authorities have flexibility also under the current rules to carry out the on-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. in the 2nd half of 2020. In the meantime, desk verifications should be carried out as much as possible remotely, making maximum use of E-cohesion: through review of documents available in programmes' information systems or submitted electronically by auditees.

As regards audits by the audit authorities, the CRII measures fall under normal audit work, carried out after this expenditure has been declared to the Commission. Audit authorities will draw some of these operations as part of their normal random sampling exercise (which most probably could fall in the 2nd or 3rd sampling period). Similar to management verifications, audits can be done desk-based and using electronically available documents as much as possible. The regulation provides that audits can be desk based and need to include on-the-spot verification of the physical implementation only where necessary (article 27(3) of Commission Delegated Regulation 480/2014). Whenever on-the-spot visits are required, these can be postponed. Once the emergency is over, the audit authority will be able to assess the scope of the activities to be carried out and review the priorities, in line with the resources and time available, to ensure submission of the annual control report by 15 February 2021.

UK	How will all these measures be reconciled with audit compliance?
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For the time being we consider it is too early to assess the impact of the crisis on our respective longer-term obligations (e.g. assurance packages of next year), and we intend to assess the situation by May.

It should be noted that the EAFRD is not concerned by all the above as fund-specific rules apply.

EL	However, having in mind that the time of "return to normality" is not foreseeable yet, I would like to encourage you to consider, even if it might be too soon for that, the scenario of taking into consideration an extended period of 2 years (1/7 /2019-30/6/2021) based on which a common assurance package would be submitted, for 2 accounting years, on 15/2 /2022. In this direction, the Audit Authorities could apply one multi-period sampling in order to examine the expenditure submitted. This seems to be even more proper since it seems that there will be changes in partnerships agreements in order to provide financial assistance for measures and actions that will help the European population face the situation
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