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III *Preparatory acts*

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Opinion No°2/2020 (*pursuant to Articles 287(4) and 322(1)(a), TFEU*) on the Commission's amended proposal of 14 January 2020 on the Common Provisions Regulation (*COM(2020) 23 final*) 1

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III

(Preparatory acts)

COURT OF AUDITORS

OPINION No°2/2020*(pursuant to Articles 287(4) and 322(1)(a), TFEU)***on the Commission's amended proposal of 14 January 2020 on the Common Provisions Regulation (COM(2020) 23 final)***(2020/C 154/01)*

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Introduction

1. On 14 January 2020, the Commission published its proposal for an amendment of the common provisions regulation (CPR) for the next programme period, 2021–2027 ⁽¹⁾. The legal basis of the Commission's proposal means that consultation with the Court of Auditors is mandatory ⁽²⁾, and the Council and the European Parliament separately wrote to the Court of Auditors asking for its views ⁽³⁾. This Opinion fulfils the consultation requirement.

2. The Commission's amended proposal for the CPR deals with the introduction of the new Fund – the Just Transition Fund (JTF). The JTF will complement the proposed cohesion policy funds covered by the CPR, including the European Regional Development Fund (ERDF), and the European Social Fund Plus (ESF+) and the Cohesion Fund (CF).

⁽¹⁾ Amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument (COM(2020) 23 final).

⁽²⁾ Treaty on the Functioning of the European Union, Article 322(1)(a).

⁽³⁾ The ECA received letters from the European Parliament and the Council of the European Union requesting its views on 4 February 2020 and 23 January 2020 respectively.

3. In October 2018 we published our Opinion on the initial CPR proposal ⁽⁴⁾. The current opinion is limited to the Commission's amended proposal. As the legislative process is continuing, we invite the Commission and the legislators to take account of the issues for consideration that we raise in both opinions.

Impact assessment

4. Neither the Commission's amended proposal for the CPR, nor its accompanying proposal for Regulation of the European Parliament and of the Council establishing the Just Transition Fund (the JTF Regulation), was subject to an impact assessment. According to the proposal, this was owing to time constraints and the previous work that had been done in the context of the original CPR proposal ⁽⁵⁾. In April 2016, the European Parliament, the Council and the Commission recognised the importance of impact assessments, as a tool for improving the quality of legislation ⁽⁶⁾. This includes mandatory impact assessment by the Commission of legislative initiatives expected to have significant economic, environmental or social impact. We found previously that quality of the legislation is also key to reducing the administrative burden and to ensuring that programmes are well designed ⁽⁷⁾.

5. In our first Opinion we noted that while impact assessments had been carried out for the fund-specific regulations, there was no impact assessment for the CPR ⁽⁸⁾. The Commission has now further deviated from its own good practice, by not carrying out an impact assessment for the new JTF. This gives rise to risks such as raising stakeholders' expectations beyond reasonable levels, and whether the funding proposed addresses the investment needs of the territories affected by the JTF.

EU-level strategy objectives

6. We found the lack of high level EU priorities to be an important weakness in the original CPR proposal ⁽⁹⁾. We therefore welcome, in principle, the debate on EU priorities launched by the Commission in conjunction with the presentation of the European Green Deal.

7. The amended CPR proposal introduces a new specific objective for JTF funding, but this objective is broad and does not clearly specify what is expected with the money ⁽¹⁰⁾. In order for the funding to be effective, once the Green Deal has been endorsed by Member States they will have to define meaningful and specific objectives in their regional strategies (territorial just transition plans ⁽¹¹⁾). The quality of these objectives will, in turn, depend on the quality of Member States' National Energy and Climate Plans, as the legislation requires just transition plans to be consistent with these plans ⁽¹²⁾. We note that as of 7 February 2020, eight Member States had not submitted their final plans to the Commission against a deadline of 31 December 2019.

⁽⁴⁾ Opinion No 6/2018 (pursuant to Articles 287(4) and 322(1)(a) TFEU) concerning the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument.

⁽⁵⁾ European Commission: Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund (COM(2020) 22 final), explanatory memorandum.

⁽⁶⁾ Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on better law-making, of 13 April 2016. In addition, the Commission's 2017 Better Regulation Guidelines (SWD(2017) 350) recognise impact assessments as one of the better regulation principles.

⁽⁷⁾ ECA Briefing paper, Simplification in post-2020 delivery of Cohesion Policy, May 2018, paragraphs 30–34 and Guiding Principle III.

⁽⁸⁾ Opinion No 6/2018, paragraph 5.

⁽⁹⁾ Opinion No 6/2018, paragraph 20.

⁽¹⁰⁾ Amended proposal for the CPR Regulation (COM(2020) 23 final), Article 4: 'The JTF shall support the specific objective of enabling regions and people to address the social, economic and environmental impacts of the transition towards a climate-neutral economy'.

⁽¹¹⁾ Proposal for the JTF Regulation (COM(2020) 22 final), Article 6.

⁽¹²⁾ Proposal for the JTF regulation (COM(2020) 22 final), Article 6(1).

8. Programming of the JTF represents a bottom-up approach. The EU's success in meeting the aspirations set out in the Green Deal initiative will depend on the commitment of the regions and the Member States to contribute effectively towards the goal of decarbonisation. In this context we recall our conclusion from our first Opinion, that 'the draft CPR does not articulate a clear vision as to what the EU wishes to achieve and that this presents potential risks to the design, implementation and impact of the policy'. We invited the Commission and legislators to consider proposing clear EU priorities – with associated targets – to which the funds have to contribute ⁽¹³⁾. These points remain valid for the JTF.

The performance framework for the Just Transition Fund

9. The proposal for an amended CPR introduces a performance framework for monitoring, reporting and evaluating the performance of JTF interventions. The JTF Regulation proposes common output and result indicators for use in the programmes ⁽¹⁴⁾. These common indicators are largely aligned with the common indicators proposed for the ERDF and ESF+. In addition, Member States may propose programme-specific indicators, on the basis of their territorial just transition plans. We welcome the introduction of the common output and result indicators as an important step to increase the focus on performance, by enabling the aggregation of performance data and comparisons of performance ⁽¹⁵⁾.

Monitoring and the use of performance data for the Just Transition Fund

10. The draft CPR obliges Member States to transmit information on the financial and performance implementation of each programme every two months via an electronic system ⁽¹⁶⁾. We note, however, that the proposed amendment to the CPR has not adjusted the title of the relevant template to reflect the need to transmit performance data for JTF-financed operations ⁽¹⁷⁾.

11. As regards the use of the performance data for the JTF, the amended CPR introduces the possibility of financial corrections for the under-achievement of JTF targets ⁽¹⁸⁾. This proposal has the potential to strengthen accountability for achieving results, as it seeks to establish a direct link between good performance and funding. We found previously that it has been difficult to apply sanctions of this sort, weakening the potential incentivising effect ⁽¹⁹⁾. We therefore welcome the Commission's proposal in principle, but note that it would benefit from greater clarity on the methodology that will be used for elements such as: assessing the soundness of the targets set; judging under-achievement; and applying financial corrections. For example, it is not clear whether underperformance in terms of results would be taken into account.

12. The Commission and the legislators should consider:

- (1) Amending Annex VII of the CPR to capture information on output and result indicators for the JTF and other funds covered by Cohesion Policy.
- (2) Specifying the methodology for assessing financial corrections related to the under-achievement of targets established for the JTF.

Delivery mechanism

13. In our first Opinion, we drew attention to the potential benefits offered under the CPR of using a simplified delivery mode: 'financing not linked to costs'. Previous audits have shown that this form of support is less prone to compliance errors and helps reduce the administrative burden ⁽²⁰⁾. Since the proposal envisages payments under the JTF being more closely linked to the achievement of certain conditions, the JTF would be well suited to this form of delivery, whereby regions' success in meeting their targets for decarbonisation would be directly rewarded.

⁽¹³⁾ Opinion 6/2018, paragraphs 22 and 23.

⁽¹⁴⁾ Proposal for the JTF Regulation (COM(2020) 22 final), Article 8 and Annex III.

⁽¹⁵⁾ Opinion No 6/2018, paragraph 59.

⁽¹⁶⁾ CPR proposal (COM(2018) 375 final), Article 37 and Annex VII, Template for the transmission of data.

⁽¹⁷⁾ Amended proposal for the CPR Regulation (COM(2020) 23 final), Annex VII and the CPR proposal (COM(2018) 375 final), Annex VII, Table 3.

⁽¹⁸⁾ Amended proposal for the CPR Regulation (COM(2020) 23 final), Article 98.6, and proposal for the JTF Regulation (COM(2020) 22 final), article 9.

⁽¹⁹⁾ Briefing Paper: Delivering performance in Cohesion, June 2019, guiding principle 6.

⁽²⁰⁾ Opinion No 6/2018, paragraphs 76–77.

14. The Commission and the legislators should consider:

(3) Encouraging Member States to use the option of financing not linked to costs in the JTF wherever possible.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 26 March 2020.

For the Court of Auditors

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President

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