

III

(Preparatory acts)

COURT OF AUDITORS

OPINION No 5/2020*(pursuant to Articles 288(4) and 322(1)(a), TFEU)***on the Commission's 2020/0006 (COD) proposals of 14 January 2020 and of 28 May 2020 for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund (COM(2020) 22 final and COM(2020) 460 final)***(2020/C 290/01)*

CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Introduction.....	1-4	2
General Comments.....	5-9	3
Specific Comments.....	10-25	3
Resources for the JTF.....	10-11	3
Timeframe for using funds.....	12-14	4
Scope of support.....	15-19	4
Performance framework.....	20-23	5
Allocation method.....	24-25	6

Introduction

1. In December 2019, the Commission published the European Green Deal (COM(2019) 640 final), which aims to support the transition to a transformed EU economy, and to respond to the challenges posed by climate change and environmental degradation. In January 2020, the Commission proposed creating a European Green Deal Investment Plan, which included the Just Transition Mechanism.

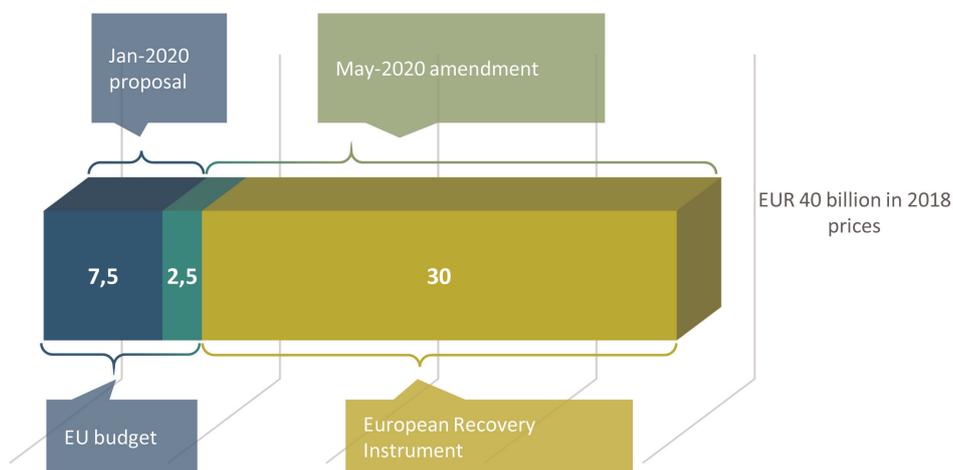
2. The Just Transition Mechanism would target the regions and sectors most affected by the transition towards the green economy. This support would be available to address the social, economic and environmental impacts of transition. The mechanism is centred on territorial just transition plans, and has three pillars of financing.

Just Transition Mechanism: pillars of financing		
a Just Transition Fund (JTF) , implemented through shared management	a just transition scheme to leverage private investments	a public sector loan facility with the European Investment Bank, backed by the EU budget

3. The January 2020 proposal for a regulation establishing the Just Transition Fund (COM(2020) 22 final) planned EUR 7,5 billion in 2018 prices from budget appropriations. The JTF complements the proposed cohesion policy funds for the 2021-2027 multi-annual financial framework (MFF) covered by the Common Provisions Regulation (CPR), including the European Regional Development Fund (ERDF), and the European Social Fund Plus (ESF+) and the Cohesion Fund (CF). In May 2020, following the COVID-19 outbreak, the Commission amended its proposal on JTF (COM(2020) 460 final), proposing additional spending of EUR 32,5 billion in 2018 prices (see Figure 1).

Figure 1

JTF resources – in billion euro, 2018 prices



Source: ECA, based on the JTF proposal and its amendment.

4. The legal basis of the Commission’s amended proposal requires consultation with the European Court of Auditors ⁽¹⁾, and the European Parliament and the Council have asked the Court for its opinion. This opinion fulfils the consultation requirement. This opinion is limited to the JTF proposals, and complements our opinions below:

— Opinion No 1/2018 on the Commission’s proposal of 2 May 2018 for a regulation on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States;

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

- Opinion No 6/2018 on the Commission’s proposal of 29 May 2018 on the CPR, COM(2018) 375 final;
- Opinion No 2/2020 on the Commission’s amended proposal of 14 January 2020 on the CPR, COM(2020) 23 final;
- Opinion No 4/2020 regarding the proposed REACT-EU regulation and Common Provisions Regulation governing the ESI funds.

We aim to publish an opinion on the public sector loan facility of the Just Transition Mechanism later in 2020.

General Comments

5. Significant investments will be required across the EU to achieve the EU’s transition to a climate-neutral economy by 2050. EU support for this transition should target the regions most affected and where it will have the greatest impact.

6. Recitals 6 and 10 of the proposal link the JTF to the Green Deal, as a response to climate and environmental challenges, to support the EU’s transition to a climate-neutral economy by 2050. However, the articles of the proposal do not establish a clear link to the EU’s climate ambitions, for example in its specific objective, scope of support, programming of the JTF resources, or the territorial just transition plans.

7. Under the EU emissions trading system (ETS), industrial installations considered to be at significant risk of carbon leakage receive special treatment. The derogation under Article 10c of the EU ETS Directive ⁽²⁾ grants free allowances to existing power plants in selected Member States for a transitional period, to support modernisation of their electricity-generating sectors ⁽³⁾. Article 10d of the same Directive establishes the Modernisation Fund, aimed at modernising energy systems, improving energy efficiency and ensuring a just transition for carbon-dependent regions by 2030. Some activities can be supported by both the JTF and the Modernisation Fund.

8. The proposal thus provides further funding for regions that have already received dedicated funds for energy modernisation. We have not identified a comprehensive analysis of what the previous EU funding achieved in these regions, or of their remaining needs. It is important that the just transition plans address the issue of the coordination and complementarity of various sources of funding.

9. In the proposal, the linkage between performance and funding is relatively weak, and there is a significant risk that the use of these funds will not end the heavy reliance of some regions on carbon-intensive activities. This risk is accentuated by the limited timeframe of the programme: if the expected reduction of employment in carbon intensive sectors is not achieved within the period, there is a risk that further spending will be allocated to finance the transition.

General Comments	<ul style="list-style-type: none"> — need for a stronger link to the EU’s climate and environmental ambitions — no analysis of what previous funding for a just transition achieved — weak linkage between performance and funding — risk that transition will need to be financed again
-------------------------	--

Specific Comments

Resources for the JTF

10. Essentially, the amended proposal on establishing the JTF increases the support from EUR 7,5 billion to EUR 40 billion (2018 prices). The Commission justifies the increased EU support on the basis of the effects of the COVID-19 crisis, and differences in national and regional capacities to deal with them.

11. The Commission has not carried out a specific impact assessment, or a stakeholder consultation, in support of the amended amount ⁽⁴⁾. The Commission faced a tight deadline to draft the amended proposal, and to assess the likely costs of the transition and the impact of the COVID-19 crisis. However, a sound needs analysis would support better allocation of the EU’s financial resources, and target and quantify the objectives to be achieved.

⁽²⁾ Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

⁽³⁾ See European Environment Agency Report No 14/2018: Trends and projections in the EU ETS in 2018, The EU Emissions Trading System in numbers, Figure 2.12.

⁽⁴⁾ See also ECA remarks in brief on the Commission’s legislative proposals for the next MFF of 14 February 2019, and our forthcoming Review 2/2020 on Law-making in the EU after almost 20 year of Better Regulation, paragraph 9.

Resources for the JTF	<ul style="list-style-type: none"> — increased support made available for a just transition — important to quantify the financing needs, to target and quantify the objectives to be achieved
------------------------------	---

Timeframe for using funds

12. The deployment of the JTF resources depends on smooth adoption of the 2021-2027 MFF, as well as of the CPR proposals, including the JTF Regulation. Any delays in adopting these proposals will further reduce the time available to use the JTF resources. Furthermore, the JTF programming will be based on the just transition plans, which should be consistent with the National Energy and Climate Plans. The Commission can only approve the just transition plans after the adoption of the 2021-2027 MFF, so it estimates that these plans cannot support Member States' funding requests until mid-2021 at the earliest.

13. The proposed amended Regulation provides that resources from the European Recovery Instrument (ERI) – EUR 32,8 billion in current prices – should be committed by 2024, and used by 2026.

14. There is, therefore, a relatively narrow window in which Member States should deliver the results expected. This increases the risk that Member States will either not use the funding, or will use it without achieving the required transition.

Timeframe for using funds	<ul style="list-style-type: none"> — delays in adopting the MFF and CPR proposals to further reduce the time available — challenging for Member States to effectively use the funding within the proposed timeframe
----------------------------------	---

Scope of support

15. According to Article 2 of the proposal, the JTF should contribute to 'enabling regions and people to address the social, economic and environmental impacts of the transition towards a climate-neutral economy'. Under the proposal, just transition plans should be consistent with Member State National Energy and Climate Plans: achieving the JTF objective is therefore dependent on these ⁽⁵⁾. The policy interventions would heavily depend on the choices Member States make in their just transition plans and the Commission's approval of these plans. We believe it is crucial that the just transition plans include clear commitments to support transition projects well aligned with EU climate objectives.

16. Eligible activities under the proposed JTF primarily address the social and economic objectives, and to a lesser extent the environmental ones: the proposal provides for investments in regeneration and decontamination of sites, land restoration and repurposing projects (Article 4(2)(f)). In line with the polluter pays principle ⁽⁶⁾, costs such as land restoration or decontamination should normally be borne by the originator.

17. Based on recital 10 of the proposal, only sustainable activities aiming to actively contribute to a climate-neutral and circular economy should be included in the just transition plans and eligible for financing, in line with the National Energy and Climate Plans. To ensure consistency with EU climate objectives, it would be useful if the regulation explicitly excluded activities leading to a net increase in greenhouse gas emissions from the scope of support.

18. Eligible activities should follow the 'do no harm' principle, to avoid unintended negative consequences, in particular with regard to climate change. Article 5(d) of the proposal specifically excludes investments related to the production, processing, distribution, storage or combustion of fossil fuels from the JTF support. Any investments in fossil fuels (for example, in natural gas or oil) risk becoming 'stranded assets' ⁽⁷⁾.

19. Article 4(2) second subparagraph allows funding of productive investments in enterprises other than SMEs in certain areas, where 'necessary for the implementation of the territorial just transition plans'. If this is the case, plans should include an exhaustive list of such enterprises and should justify the need of supporting them (Article 7(2)(h)). We consider that, in practice, funding for enterprises other than SMEs should be an exception, and linked to accelerating reduction in CO₂ emissions.

⁽⁵⁾ Opinion No 2/2020 on the Commission's amended proposal of 14 January 2020 on the CPR, COM(2020) 23 final, paragraph 7.

⁽⁶⁾ See Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

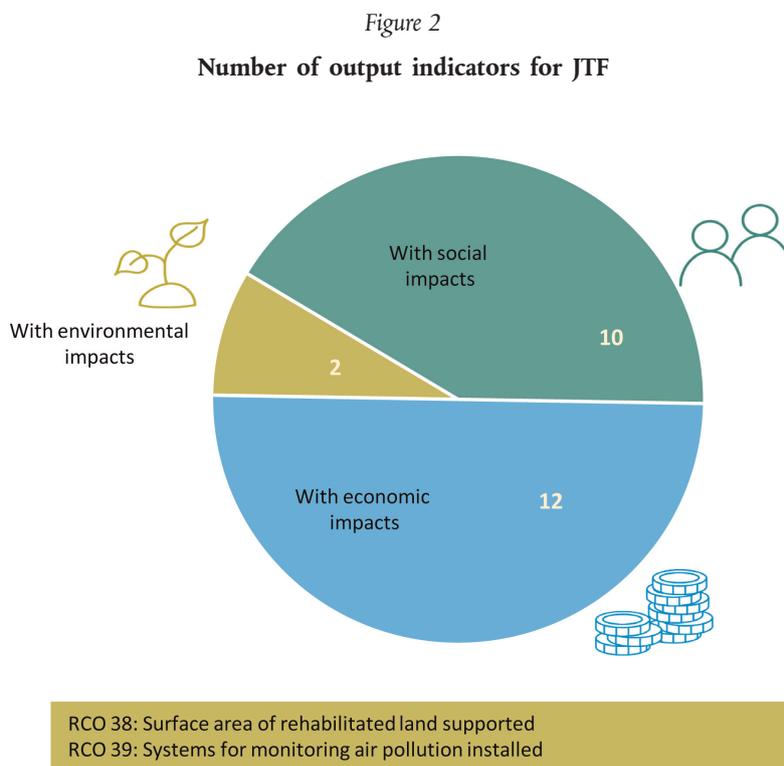
⁽⁷⁾ See Review No 01/2017: EU action on energy and climate change (Landscape review), paragraphs 211 and 212.

Scope of support	<ul style="list-style-type: none"> — need for clear commitments to EU climate objectives in the just transition plans — activities leading to a net increase in greenhouse gas emissions should be explicitly excluded from the scope
-------------------------	---

Performance framework

20. The JTF Regulation proposes common output and result indicators, largely aligned with the common indicators proposed for the ERDF and ESF+. This will support the aggregation and analysis of performance data ⁽⁸⁾.

21. As shown in *Figure 2*, output indicators relate mostly to the economic and social, rather than environmental, impacts of transition towards a climate-neutral economy. The common indicators for JTF do not clearly capture the objective to transition out of carbon-intensive sectors.



Source: ECA, based on Annex III of the proposed JTF regulation.

22. The JTF Regulation proposal allows for financial corrections for failing to achieve at least 65 % of the targets established for common indicators. As financial corrections based on performance targets have the potential to strengthen accountability for achieving results, we have previously invited the Commission and the legislators to consider clarifying the methodology for assessing financial corrections (e.g. assessing the soundness of the targets set; judging under-achievement; applying financial corrections) ⁽⁹⁾.

⁽⁸⁾ Opinion No 6/2018 on the Commission’s proposal of 29 May 2018 on the CPR, COM(2018)375 final, paragraph 59 and Opinion No 2/2020 on the Commission’s amended proposal of 14 January 2020 on the CPR, COM(2020) 23 final, paragraph 9.

⁽⁹⁾ Opinion No 2/2020 on the Commission’s amended proposal of 14 January 2020 on the CPR, COM(2020) 23 final, paragraphs 11 and 12.

23. While these financial corrections would introduce an element of performance conditionality, the incentive is reduced by the large shortfall in performance that would not trigger any correction – and by the fact that the common indicators do not clearly capture the objective to transition out of carbon-intensive sectors. We previously noted in other policy areas that targets could be missed by a considerable margin with little impact on EU financing ⁽¹⁰⁾. It would be preferable to use a delivery model that links disbursement of funds to the achievement of objectives. Such an approach could be combined with a requirement to reimburse the funding if commitments set out in the territorial just transition plans are not maintained over a specific period.

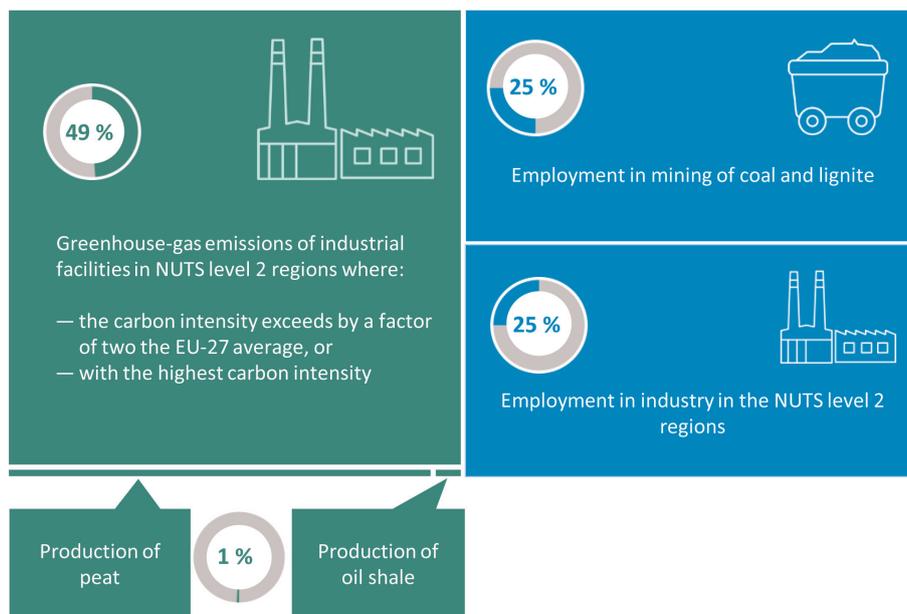
Performance framework	<ul style="list-style-type: none"> — common indicators do not clearly capture transition out of carbon-intensive sectors — financial corrections linked to achievement of targets: potential to strengthen accountability for achieving results, but preferable to use a delivery model that links disbursement of funds to the achievement of objectives
------------------------------	---

Allocation method

24. Annex I of the JTF amended regulation proposes an allocation method for the JTF resources in financial envelopes for the Member States, capped at EUR 8 billion (in 2018 prices) – see Figure 3. The Commission informed us that it faced the challenge of identifying reliable data available at a regional and territorial level, so it decided to base the allocation on NUTS level 2 regions, while the territorial just transition plans are based on a more granular level – NUTS level 3 regions.

Figure 3

Criteria for allocation of JTF resources



Source: ECA, based on Annex I of the proposed JTF regulation.

⁽¹⁰⁾ Opinion No 7/2018 concerning the Commission’s proposals for regulations related to the Common Agricultural Policy for the post-2020 period, paragraph 8.

25. The allocation method considers a set of pre-existing conditions for Member States, but performance conditionality is weak. Thus, two Member States with similar transition needs – as quantified by the proposed allocation method – would hypothetically receive a similar level of funding, although one Member State could commit to – and succeed in – closing down carbon-intensive operations, while another could just downsize them, even temporarily. The proposed allocation method, while targeting affected regions, provides weak incentives for the deep, significant, structural change needed to achieve the EU's climate objectives.

Allocation method	<ul style="list-style-type: none">— no link to Member States' level of climate ambition— weak incentives for a significant structural change
--------------------------	---

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 20 July 2020.

For the Court of Auditors
Klaus-Heiner LEHNE
President
