III

(Preparatory acts)

COURT OF AUDITORS

OPINION No 8/2020

(pursuant to Articles 287(4) and 322(1)(a), TFEU)

on the Commission's 2020/0100 (COD) proposal for a Regulation of the European Parliament and Council on the public sector loan facility under the Just Transition Mechanism *(COM(2020) 453 final)*

(2020/C 373/01)

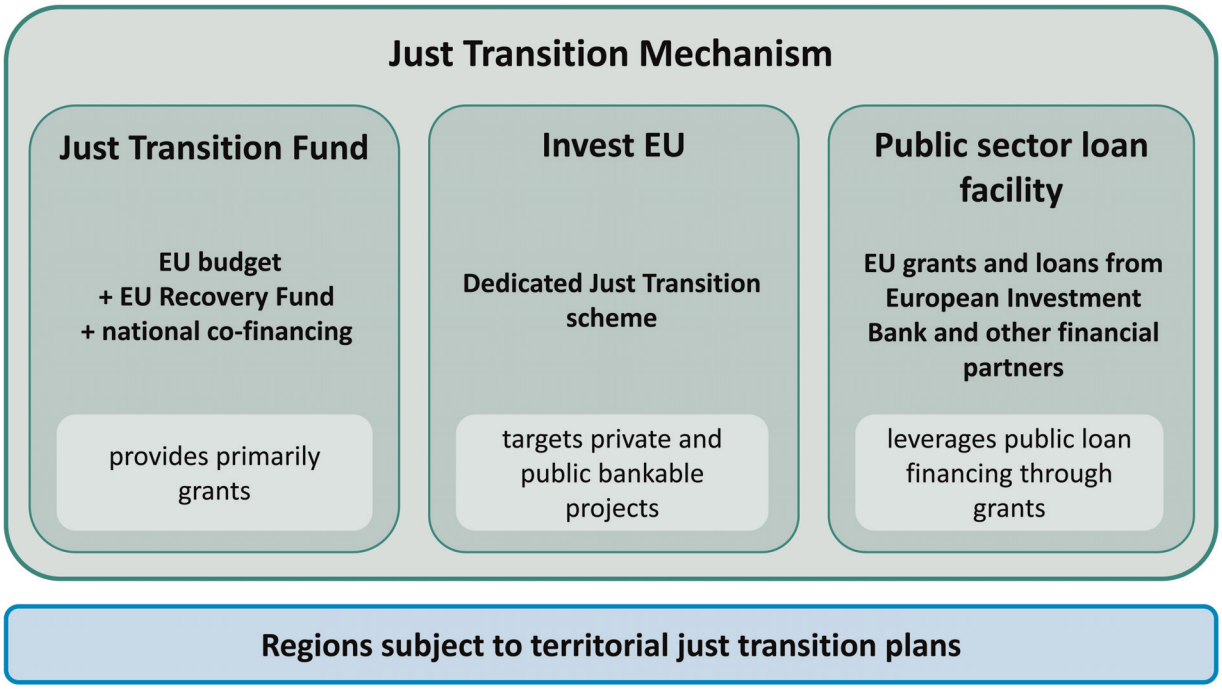
CONTENTS

Introduction

1. In December 2019, the Commission adopted a Communication on the European Green Deal (COM(2019) 640 Final), which aims to transform the EU into a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases by 2050, economic growth is decoupled from resource use, and nobody and nowhere is left behind. In January 2020, the Commission proposed creating a European Green Deal Investment plan, which included the 'Just Transition Mechanism'. This mechanism targets the regions and sectors most affected by the transition towards the climate-neutral economy, providing a combination of grants and repayable forms of financing, such as loans, 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 (see Figure 1).

Figure 1

Proposed structure of the Just Transition Mechanism



Source: ECA, on the basis of European Commission.

2. The public sector loan facility (the 'Facility') is the third pillar of the Just Transition mechanism. It will consist of a grant component worth EUR 1,5 billion from the EU budget and a loan component of up to EUR 10 billion in own resources from the European Investment Bank and potentially other financial partners. According to the Commission ([1]), the Facility is expected to mobilise between EUR 25 billion and 30 billion of public investment over the 2021-2027 period.

3. The Facility is a form of 'blending facility', which is defined as a cooperation framework established between the Commission and, among others, development or other public finance institutions with a view to combining non-repayable (grants) and repayable forms of support (loans) ([2]).

4. The specific objective of the Facility is to increase public-sector investment to address the development needs of EU regions identified in territorial just transition plans, resulting from the challenges of transition towards a climate-neutral economy. The draft regulation proposes to do this by facilitating the financing of projects that do not generate a sufficient stream of own revenues and that would not be financed without the element of grant support from the EU budget. The grant element would, for example, help a public body to finance a project that would otherwise not be implemented (or not to the same extent) or be delayed due to budgetary constraints.

([1]) See page 22 of the Commission Communication on Sustainable Europe Investment Plan (COM(2020) 21 final).
([2]) Article 2 of the Financial Regulation applicable to the general budget of the Union, July 2018.

5. Although all three pillars target the same regions and territories subject to territorial just transition plans, each of them should, in principle, target projects with different financing needs. The Just Transition Fund (the first pillar) supports public projects primarily through grants. InvestEU (the second pillar) may support public and private investments that generate enough revenue to be bankable. The Facility (third pillar) finances public-sector projects that generate their own streams of revenue but not sufficient to cover investment costs.

6. The legal basis for the Commission's proposal requires consultation with the European Court of Auditors (ECA) ([3]), and the European Parliament and the Council have asked the ECA for its opinion. This opinion fulfils the consultation requirement. It is limited to the proposal of the public sector loan facility under the Just Transition Mechanism and complements and reiterates some points of our opinion No 5/2020 on the Commission's proposal establishing the Just Transition Fund (COM(2020) 22 final).

General comments

7. Significant investment will be required across the EU to achieve its transition to a climate-neutral economy by 2050. EU support for ensuring that this transition is fair and just should target the regions most affected and where it will have the greatest impact.

8. Recitals 1 and 5 of the proposal link the Facility to the Green Deal as a response to climate and environmental challenges in order to support the EU's transition to a climate-neutral economy. However, the draft regulation does not establish a clear link to the EU's climate ambitions.

9. We have noted that the Commission has not carried out an ex-ante evaluation or impact assessment as required by Article 209 of the Financial Regulation, which states that blending operations have to be based on *ex ante* evaluations or impact assessments containing explanations concerning the type of financial operation chosen, taking into account the policy objectives pursued and the associated financial risks and savings for the budget. Such analysis would explain why the Commission decided to use blended support for the third pillar of the Just Transition Mechanism and would identify the issues to be addressed, the amount of funding needed, the added value of EU involvement and the expected effects of different options.

10. As no needs assessment or ex-ante evaluation was prepared, it is unclear to what extent real demand exists for the Facility and how effective it will be. In these circumstances, it would be appropriate for the Commission to further analyse and follow up these unknown factors in its annual reporting on financial instruments pursuant to Article 250 of the Financial Regulation.

11. The proposal provides funding for regions and territories that have already received funding for development needs related to EU climate objectives, including dedicated EU funding. We have not found a comprehensive analysis of what previous EU funding has achieved in these regions, or of their remaining needs. In our opinion, it is important that just transition plans analyse this issue.

Specific comments

Risk related to a grant not linked to costs

12. In order to reduce the financial burden for beneficiaries resulting from reimbursement of loans, grants under the Facility will take the form of financing not linked to specific project costs. The grant component will represent up to 15 % of the loan (and up to 20 % in less developed regions). Article 8 (b) of the draft regulation states that the projects may not receive support under any other EU programme. This limits the risk of double EU financing. However, in our opinion, technical assistance and advisory resources could be exempted from the obligation laid down in this article, in order to enable synergies with other EU programmes supporting the preparation and implementation of eligible projects.

Additionality of the instrument

13. Under Article 8(d) of the proposal, the Facility can support only projects which do not generate a sufficient stream of own revenues to be financed without EU support. The Facility could thus increase the affordability of the projects, which would enable beneficiaries to undertake them sooner and to their full extent. In our opinion, this requirement is necessary to prevent the replacement of potential support and investment from other public or private sources and thus guarantee additionality as defined in Article 209(2)(b) of the Financial Regulation.

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

14. It is important that the Commission properly verify and apply this condition of generating insufficient flows of own revenues in order to ensure that all projects selected meet the additionality requirement as defined above.

Climate objective and sustainability

15. Recital 14 of the proposal mentions that specific eligibility and award criteria should be defined in work programmes and calls for proposals. However, this requirement is not further clarified in the articles of the draft regulation. In our opinion, setting a number of basic or general requirements at EU level, would help to ensure its effectiveness in situations where demand exceeds national grant allocations. In particular, requirements could be included, such as:

— the project should address needs identified in the territorial just transition plans;

— the grant should be relevant in making the project affordable for the beneficiary; and

— the project should contribute to the EU's climate objectives.

16. Furthermore, the Facility's conditions should be linked more strongly to the achievement of EU climate objectives, for example by using criteria established by the EU Taxonomy ([4]) in cases where the Commission has to assess the degree to which an investment is environmentally sustainable. This would also ensure that the Facility avoids supporting activities leading to a net increase in greenhouse gas emissions.

17. In addition, the draft regulation does not include any condition that projects should satisfy the 'do no harm' principle, in particular with regard to climate change. Activities ineligible for the Just Transition Fund ([5]), which specifically include investments related to the production, processing, distribution, storage and combustion of fossil fuels, should also be excluded from the Facility. This is to ensure that the Facility does not support investments in other, less polluting fossil fuel infrastructure, which would not help to achieve the climate-neutrality objective. It would also prevent projects rejected under Article 5 of the Just Transition Fund regulation from being resubmitted and financed under the Facility.

Financing of the Facility

18. The Commission proposes funding the grant component mostly from the foreseeable surplus of the provisioning for the budgetary guarantee established by the European Fund for Strategic Investments (EFSI) ([6]). The EFSI Regulation states that up to 35 % or (EUR 9,1 billion) of the budgetary guarantee of EUR 26 billion will be provisioned in a dedicated guarantee fund, in order to prevent direct calls on the EU budget. The Commission has estimated (based on EIB data as of 31 December 2019) that potential losses on the overall portfolio will be below this provisioned amount, and that more than EUR 1 billion will not be consumed by the guarantee fund and could be reallocated to the Facility.

19. The Commission made this calculation based on a number of assumptions before the COVID-19 crisis. However, this crisis may directly affect a considerable number of beneficiaries of EIB loans backed by the EFSI guarantee and may thus result in a higher amount of guarantee calls in the future years.

20. In our previous opinion on EFSI, ([7]) we stated that reducing the provisioning rate from 50 % to 35 % by amending the EFSI regulation (EFSI 2.0) increased the risk of the amount placed in the guarantee fund being insufficient, and of direct calls on the budget being necessary. In order to maintain a prudent approach in limiting overall financial exposure to the EFSI guarantee's sizeable contingent labilities, we consider that an updated analysis is necessary to ensure that EUR 1 billion can be assigned to the Facility.

([4]) As established by the Regulation (EU) 2020/852 of the European Parliament and of the Council (OJ L 198, 22.6.2020, p. 13).
([5]) Article 5 of the Proposal on establishing the Just Transition Fund (COM(2020) 22).
([6]) Regulation (EU) 2015/1017 of the European Parliament and of the Council (OJ L 169, 1.7.2015, p. 1).
([7]) Opinion No 2/2016: EFSI: an early proposal to extend and expect (OJ C 465, 13.12.2016, p. 1).

Performance indicators

21. The annex to the draft regulation lists a limited number of key indicators. These are mainly output indicators (e.g. volume of loans signed, number of projects by sector). Unlike the draft regulation for the Just Transition Fund (which pursues similar objectives to the Facility the proposal does not include separate result indicators and does not define output indicators for the social and economic impact of transition to a climate-neutral economy. Nor does it include the obligation to define a baseline and target for such indicators. There are also no indicators on the environmental impact of the transition, nor any indicators providing clear information on the objective of supporting the shift away from carbon-intensive sectors. Such indicators could either be defined in the annex to the draft regulation, or an obligation to define them could be included in Article 14(3).

22. Of the proposed indicators, only key performance indicator 4 (number of projects receiving support) is broken down by region and territory affected by the territorial just transition plan. In order to adequately monitor the implementation of the Facility, it would be good if all the indicators proposed, including grant and loan amounts, were broken down by region, where relevant.

This Opinion was adopted by the Court of Auditors in Luxembourg on 24 September 2020.

For the Court of Auditors
Klaus-Heiner LEHNE
President