1. Structural Funds – horizontal questions

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The replies on this website will be updated, where necessary, as soon as possible following the adoption of the amendments as part of the 'CRII Plus' package. Updated replies will be marked.

Any reference in the Q&A to "national authorities" or "the Member State" should be read - for ETC - as referring to the "managing authority" or "the Member State hosting the MA".

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.

Please also note that for EU spending programmes under direct/indirect management, the Commission has issued guidance with regard to the implications of the COVID-19 outbreak. For example, according to that guidance, where individuals who were to take part in meetings or events are prevented from doing so because of COVID-19, expenses of travel or accommodation that could not be cancelled and which are not reimbursed from other sources should be regarded as eligible costs. Furthermore, where the execution of contracts is impeded because of COVID-19, substitute performance or delayed performance could be permitted if requested and justified by the beneficiary/contractor. Finally, due to the COVID-19 outbreak, an extension of the deadlines for submission of proposals or tenders under on-going Union award procedures may be considered.

Further details are added in response to the more specific questions below.

[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

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 it 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 concept of force majeure is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. Where Union law refers to reasons of force majeure, it requires the fulfilment and demonstration, on a case-by-case basis, of three cumulative conditions set out by the Court of Justice[1]. 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, the COVID-19 outbreak is not 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. This assessment should also comprise examination of whether all due care has been taken to avoid, mitigate and minimize the consequences of the event. *Case-by-case assessment is therefore inevitable to establish whether flexibility can be exercised.*

Managing authorities, provided this is in line with national law, *after case-by-case assessment*, may decide to grant the same flexibility to operations which, on the basis of their professional judgment, can be considered to have been affected in the same or similar manner and to the same extent by the COVID-19 outbreak (e.g.: giving the same extension of time limit for the execution of operations not completed during the confinement period because of a lack of workforce/impossibility of intervention of service providers). As advised in the reply '*Flexibility to adjust affected operations – general*', 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.

Regulation (EU) 2020/xxx (Coronavirus Response Investment Initiative Plus, CRII Plus) contains an administrative simplification to the application of the exception to decommitment under Article 87(1)(b) CPR, whereby, when the COVID-19 outbreak is invoked as a reason of force majeure, information on the amounts for which it has not been possible to make a payment application is to be provided at an aggregate level by priority for operations of total eligible cost of less than EUR 1 million. This simplification, however, only applies for decommitment, where an exception linked to force majeure is already explicitly stated in the CPR.

For the EAFRD, the COVID-19 outbreak can be recognised as a case of force majeure allowing for a derogation to prevent decommitment of funds in 2020. The Commission will examine any requests from the competent authorities in the light of the provisions related to cases of force majeure of Article 38 of Regulation (EU) 1306/2013.

[1] See 'COVID-19 and force majeure – General' for more detail

PL	The EC indicated that the application of force majeure should be on the case by case basis. However, force majeure (COVID19) may influence hundreds of projects. Would it be possible to make decision by Managing Authority that the same type of projects (e.g. under the same priority axis) are influenced by force majeure and some obligations imposed on beneficiaries will be reduced (implemented during specified period of time, implemented on a specified territory). If yes, in such cases the irregularity allegation by audit services should be excluded ex ante?

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	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. 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. Taking into account above mentioned we are interested in EC opinion on the proposed measure.
ETC	We are receiving questions from several Interreg programmes on eligibility of expenditure of cancelled missions and meetings due to the Corona-virus.
ETC	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.
DE-CZ ETC	The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the project 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?
SI-HU ETC	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?

<table>
<tr><td>EE-LVETC</td><td>Position of the Managing Authority

Covid-19 has been recognized by the WHO as a pandemic[1], so it is considered to be a case of force majeure and costs for activities cancelled due to the proliferation of Covid-19 are eligible under the following conditions:

• 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:

- 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.

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.</td></tr>
<tr><td>DK</td><td>If there conferences and events which do not take place because of COVID19, but for which costs are incurred, are these costs eligible?</td></tr>
<tr><td>PL</td><td>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?</td></tr>
<tr><td>LT</td><td>Is the expenditure for an activity eligible for funding, if it was abrupted 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.

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?

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</td></tr>
<tr><td>CZ</td><td>Will the following costs be eligible:

• 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.</td></tr>
<tr><td>SK</td><td>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?</td></tr>
</table>

ES	When, in the framework of a co-financed operation, the beneficiary had to incur and pay for actions that have been cancelled because of COVID 19, and the amounts cannot be recovered (i.e. the cost of travel), are these expenses eligible?
ES	When, in the framework of a co-financed operation, the beneficiary has incurred in non-recoverable expenses and the operation cannot finally be carried out as defined because of COVID 19 and cannot be postponed (such as participation in fairs that were cancelled or similar situations), are these expenses eligible?

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.
SI-HUETC	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.
SI-HUETC	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?
DE-CZETC	The MA of the ETC programme Saxony/Germany – Czech Republic would like to have guidance from the COM regarding the expected delays in the project implementation due to the closure of the internal EU borders and/or local organisations involved in the project implementation (see below). How to proceed • 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?

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 regulation (EU) 2020/460).

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?

This reply has been updated on 4 May 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

This is the original text of the reply. This sentence was replaced or added as part of the update, and is therefore set in blue /underline. ~~This is deleted text.~~

First, it should be recalled that the legislative framework (i.e. the CPR and in the Fund-specific rules) for the implementation of operational programmes remains fully applicable even under the current exceptional circumstances. For example, the roles and responsibilities of the monitoring committee remain unchanged. In accordance with Article 110(2)(a) CPR, the monitoring committee has to approve the selection methodology and criteria. 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 Article~~s 65(6)~~ and 125(3) CPR, including ensuring that the selection criteria are non-discriminatory and transparent.

These provisions 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 and the beneficiary can be provided with an electronic version of the document fixing the conditions of support. In addition, Article 25a(7) CPR as introduced by the Regulation (EU) 2020/558 makes it possible to select an operation fostering crisis response capacities in the context of the COVID-19 outbreak that before the submission of an application for funding to the Managing Authority, is already physically completed or fully implemented (provided that the applicable law relevant for the operation has been complied with). This is possible as this provision sets out that Article 65(6) CPR does not apply in these cases. Article 25a(7) CPR also allows for selection of such operations even when they are not covered by the current programme, i.e. before the approval of the programme amendment by the Commission (as this provision introduces a derogation to Article 125(3)(b) CPR). 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?)
BE	If new operations need to be decided, how can the managing authority meet its obligations? (launch of open calls for projects with wide dissemination, compliance with non-discriminatory and transparent selection criteria, establishment of an expert committee, etc.)
BE	What about the transition of the selection criteria to the monitoring committee?

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?

Equipment that was purchased as part of the operations supported by the ESI Funds, may be used to foster crisis response capacities in the context of the COVID-19 outbreak. In addition, expenditure related to the use of such equipment would be eligible as of 1 February 2020, in accordance with the derogation in Article 65(10) CPR introduced by the Regulation (EU) 2020/460. The treatment of such cases depends on whether the relevant operation is on-going or finalized and in the latter case, if it falls within the scope of the durability rules under Article 71 CPR or not.

When it concerns on-going operations, such use of the equipment may require adjusting the document setting out the conditions for support to the operation. 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, for the EAFRD, in Article 49 of Regulation 1305/2013, and, for the ERDF, the scope of support as laid down in Article 3 of ERDF Regulation (as modified by the Regulation (EU) 2020/460).

When it concerns operations that are finalized and the equipment is a **productive investment** (i.e. an investment in fixed capital or immaterial assets of the enterprise benefiting from the grant, which are to be used for the production of goods and services thereby contributing to gross capital formation and employment), the managing authority should satisfy itself that such use of the equipment does not result in an incompliance with the durability requirements, as set out in Article 71(1) CPR. Mainly it could be the case falling under point (c) of Article 71(1) CPR, concerning a substantial change in the nature, objectives or implementing conditions of an operation. It should be decided at the national level, whether the change is substantial[1]. This should be checked against the conditions set out in the document setting out the conditions for support to the operation. If the new intended use of equipment does not undermine the original objective of the operation, the conditions may be satisfied.

When it concerns operations that were finalized but do not fall under the scope of Article 71 CPR, the equipment may be used to foster crisis response capacities in the context of the COVID-19 outbreak in accordance with national eligibility rules, also taking into account specific rules that are laid down in, or on the basis of, the CPR or the Fund-specific rules.

[1] Judgement of the Court of 14 November 2013 in case C-388/12

CZ	Is use of equipment acquired from projects’ budget possible? ERDF equipment that is acquired from the projects’ budgets to provide research or educational activities e.g. microscopes, training medical equipment and other relevant etc. – can it be used to confront the current epidemiological situation? MA welcomes the initiative of the beneficiaries to help in such times, not to mention that it is not possible to block the usage of equipment in case of emergency.

All simplified costs options provided by the CPR could be used to provide support in the form of grants and repayable assistance to beneficiaries and the Commission strongly encourages Member States to make good use of them whenever possible.

In particular, for SME support operations under *de minimis* rules, which are not implemented exclusively through the public procurement of works, goods or services, in line with Article 67(4) CPR, as a general rule, any operation which receives support from the ERDF and the ESF, grants and repayable assistance for which the public support does not exceed EUR 100 000 should take the form of standard scales of unit costs, lump sums or flat rates.

In the context of the ESF, the Commission has already requested managing authorities to put in place specific measures, more specifically in the area of distance learning and health measures to combat the COVID-19 crisis. The managing authorities are recommended to make maximum use of the simplified cost options in place under Article 14(1) of the ESF Regulation (Commission Delegated Regulation (EU) No 2015/2195), but it may occur that additional unit costs or lump sums need to be established, for instance in the area of setting up provisional (mobile or fixed) health care facilities. This could be done on the basis of a draft budget (Art. 67(5)(aa) CPR) established on a case-by-case basis and agreed ex ante by the managing authority if the public support does not exceed EUR 100 000. Managing authorities are encouraged to start implementing these measures without delay. The Commission would also welcome a collaborative approach from the audit authorities and support to the Managing authority by assessing these SCO-schemes ex-ante. As usual, DG EMPL audit teams stand ready to assist you should it be needed.

PL	Are you considering the wider use of **rates / lump sums** at project implementation level (definition of rates / amounts at national / EU level) to improve project implementation?

The aim of the Commission’s proposal for the Coronavirus Response Investment Initiative aims at mobilising EU support as quickly as possible. However, the legislative framework for the implementation of European Structural and Investment Funds programmes remains fully applicable. Therefore, EU support should be duly acknowledged and communicated to the public as soon as it is possible and in compliance with the relevant EU rules.

The responsibilities of managing authorities and beneficiaries as regards information, communication and visibility of support from the Funds remain unchanged. At the same time, Annex XII CPR provides some flexibility as regards the timing of compliance with these obligations. For example, it refers in several cases to a period "during implementation of an operation". Additionally, point 2.2.5 of Annex XII sets out a requirement on some types of operations that no later than three months after completion of an operation, the beneficiary shall put a permanent plaque or billboard acknowledging support from the Funds.

In case it is found that any of these requirements has not been adhered to, it would be expected from the managing authority to take the necessary corrective measures, i.e. if the beneficiary was not notified about the ESI Funds support, the managing authority should notify the beneficiary about the source of funding as soon as possible.

For the EAFRD, the provisions regarding responsibilities of managing authorities and beneficiaries as regards information and publicity laid down in Annex XIII of Regulation 808/2014 also remain in place.

For the EMFF, Article 119 of Regulation 508/2014 applies.

BG	Is it possible to apply visibility rules more flexibly given the pressing time for reaction to the crisis?

In accordance with Article 65(1), eligibility of expenditure shall be defined in the national rules, except for some specific rules laid down in or on the basis of the Common Provisions Regulation and the Fund-specific rules. To provide support to the healthcare system to fight the COVID-19 outbreak, purchase of medicines may be supported under both, ERDF and ESF.

As regards ERDF, this would fall under the wording of the second investment priority under TO1 in Article 5(1)(b) ERDF Regulation, as amended by the Regulation (EU) 2020/460, i.e. "fostering investment necessary for strengthening the crisis response capacities in health services".

As regards ESF, this would fall under the fourth investment priority on access to services under TO9 in Article 3(b)(iv) ESF Regulation, as it contributes to enhancing access to health care services.

BG	In the joint letter of Commissioners Ferreira and Schmit to Member States on the CRII and EUSF support, it is stated that Structural Funds could provide extended support through the financing of medicines, testing and treatment facilities. We would like to receive more clarifications and specifications on the scope and from which Fund these could be financed, especially in terms of the eligible medicines to be purchased (at least, so far there is no widely acknowledged and certified medicine/treatment for COVID-19).

Businesses can benefit from the additional measures under the amended Articles 3(1) and 5(1)(b) ERDF Regulation and the amended Article 37(4) CPR only if such support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Where possible, when this would make support more timely and more efficient, support could be provided through existing mechanisms, e.g.

- a new product within an already set-up financial instrument (if in line with applicable public procurement rules) – see reply "Ex ante assessment and need for programme amendments when working capital is added" on how to assess if an ex ante assessment is needed and how to prepare it without unnecessary burden;
- a new call by an already designated intermediate body in the case of grants.

A new selection procedure would usually allow to select in a more targeted and transparent way those applicants which are indeed affected by the coronavirus. It could also facilitate State aid compliance if the temporary framework is used, avoiding mixing two different regimes.

It is not excluded that in some cases it could be possible to focus on already existing beneficiaries, if in line with Article 125(3)(a)(ii) CPR, the managing authority is able to draw up and apply appropriate selection procedures and criteria that are non-discriminatory and transparent. Any limitation of access to funding to beneficiaries is permitted only when duly justified (i.e. necessary) taking into account the needs and the specific objectives to be achieved. As a general rule, limiting access to funding solely to applicants which participated and succeeded in the previous call, which had not been announced then, could be considered as going against principle of non-discrimination. However, this should be assessed on case by case basis in a broader context, taking into account e.g. availability of other public funds for the other potential beneficiaries. In principle, if other public funding is available for the others on similar terms, separate calls for proposals could be justified e.g. by the fact that existing beneficiaries already went through the necessary verifications. If such restrictive approach is attempted, it should be discussed appropriately in the context of monitoring committee in line with Article 110(2)(a) which would allow the Commission, which is participating in the work of the monitoring committee in an advisory capacity, to react in the specific context.

This is without prejudice to the possibility to revise current contracts with beneficiaries (including changing their payment and implementation schedule, updating scope etc.) in line with existing contractual provisions or general rules concerning *force majeure, flexibility to adjust affected operations* – see specific replies on this topic.

BG	Is it possible to support businesses within the measures and schemes planned so far or do the procedures need to be new and focused to support companies affected by coronavirus? How will the costs incurred in implementing these measures be checked, will there be separate intervention codes for them?

The CPR provides a flexible framework for how such support could be implemented. In particular in the context of providing grants and repayable assistance:

- where the public support does not exceed EUR 100 000, e.g. if granted to SMEs under *de minimis* rules, in line with Article 67 (2a)CPR, as a general rule (in case the MS did not make use of the transitional provisions under Article 152(7) CPR), the ERDF and ESF support should take the form of a simplified cost option (lump sum, standard scales of unit costs, or flat rates), which should minimise the burden for the SMEs receiving support. Guidance on simplified costs options, including lump sums, is available also in Bulgarian;
- where the aid per undertaking is less than EUR 200 000, the Member State may decide, in line with Article 2(10)(a) CPR, that the beneficiary is not the body receiving the aid, but the body granting the aid: in such a model, the SMEs receive the support, but are not considered beneficiaries which could reduce the administrative burden.

A managing authority should choose the method which is the most appropriate given the current situation. Specific arrangements for evaluating applicants should be proportionate and could be decided by managing authorities, focusing on verification that approved support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Consultation of the monitoring committee in line with Article 110(2)(a) CPR would allow the Commission, which participate in the work of the monitoring committee in an advisory capacity, to react in a specific context.

BG	Can we use direct forms for support, for example vouchers and simplified procedures for evaluating applicants, e.g. interviews?

Article 131(4) CPR makes it possible to include a part of the advances paid to the beneficiary by the body granting the aid in the payment application. This is an exception to the general rule that the Commission reimburses only expenditure that was already incurred and paid. One of the conditions for including such advances is, in line with Article 131(4)(a) CPR, that those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or are covered by a facility provided as a guarantee by a public entity or by the Member State.

The legislative framework for the implementation of the European Structural and Investment Funds programmes remains fully applicable even under the current exceptional circumstances and this includes Article 131(4)(a) CPR. The concept of *force majeure* is of restricted scope and describes a situation in which a person is completely prevented from complying with an obligation. Article 131(4) CPR provides for a derogation for advance payments applicable to operations constitutive of State aid does and not impose any obligation on the Member State or beneficiary. Therefore, the Member State or the beneficiary cannot claim in this context the impossibility to comply with an obligation due to *force majeure* circumstances.

However, other tools, at the disposal of the Member States, could be used to address the issue, including in particular the following:

- Member States may use amounts not recovered in line with amended Article 139(7) CPR, to pre-finance the advances; the guarantees or another form of facility are required only if such advances are included in payment applications, but if the payment applications include only reimbursement of already incurred expenditure, as is the general rule already in the case of non-State aid projects, no guarantee is required;
- The guarantee or another facility could be provided by the Member State at reduced costs or without payment from the beneficiary, in compliance with the applicable State aid rules. The latter could notably require taking into account of the gross grant equivalent of such support under the applicable State aid rules, but would decrease the costs;

Costs related to such guarantees or other facilities could be made eligible under national eligibility rules.

EE	Can we derogate from the guarantee requirement in Article 131(4) CPR in the case of advances on State aid in case of force majeure, to mitigate the liquidity problems arising from the effects of force majeure and to reduce the cost of operations in such a difficult period when the guarantee requirement is disproportionate?

As regards the concept 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) were beyond the control of the person claiming force majeure; b) were abnormal and unforeseeable, and c) whose consequences 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 force majeure and thus constitute a valid justification for the incapacity to comply with an obligation. However, the outbreak is not 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.

In doing this, national authorities should examine whether all due care has been exercised ie any measures potentially taken by beneficiaries to avoid, mitigate and minimise the consequences resulting from the event as regards the fulfilment of their obligations. National authorities have flexibility in demonstrating the exercise of due care in any appropriate way.

It is underlined that the legislative framework for the implementation of the ESI Funds programmes remains fully applicable even under the current exceptional circumstances. Where the legislative framework does not foresee derogations for reasons of force majeure it cannot be presumed from the outset that the circumstances resulting from the crisis justify a derogation from applicable Union law. No automatic recourse to the notion of force majeure can be made. The extent to which the fulfilment of the obligation stemming from Article 131(4), has been affected by the COVID 19 outbreak has to be assessed by the national authorities on case by case in line with the applicable legal framework. The same applies when assessing if the case in hand constitutes an irregularity in accordance with Article 2(36) CPR or when deciding on a financial correction on individual cases. As stated above, a careful assessment has to be carried out on cases by case basis in the light of the relevant circumstances and of the applicable legal framework, which remains fully applicable even under the current exceptional circumstances. This also concerns the rules on the setup and functioning of the management and control system, which remain an important safeguard for obtaining assurance on their functioning and on the legality and regularity of operations.

[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

PL	In our opinion, all circumstances resulting from the COVID-19 outbreak can be qualified as abnormal (unusual) and unforeseeable and beyond the control of beneficiaries. What actions/exercises are required from beneficiaries during project implementation to avoid COVID-19 (the definition of 'due diligence' in terms of COVID-19)? Are any documents required (if yes, what kind of documents) to prove the fulfilment of 'due diligence'? In our opinion, any breach of Union law or of national law relating to its application, resulting from the COVID-19 outbreak (not from an act or omission by an economic operator involved in the implementation of the ESI Funds), which has, or would have the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union - does not mean 'irregularity'. Consequently, force majeure (COVID-19) is considered when deciding on financial corrections during projects implementation. Is it correct? May the COVID-19 outbreak be considered as a case of force majeure justifying failure to meet the deadlines specified in art. 131.4 CPR - certified advances paid to the beneficiary by the body granting the aid ARE NOT covered by expenditure paid by the beneficiary WITHIN THREE YEARS of the year of the payment of the advance? if the answer is positive, does it apply to both advances paid before and after COVID-19 outbreak?

In order to comply with the cohesion policy rules and with a view to facilitate access for recipients of such support, the Member State may decide under ESIF rules that the beneficiary is the 'body granting the aid' in line with Article 2(10)(a) CPR. In such a model, the SMEs receive the support, but are not considered as beneficiaries within the meaning of CPR. This option is intended to reduce the administrative costs and burden to recipients of small grant amounts. Under this set-up all obligations which beneficiaries have under ESIF rules are applicable at the level of the body granting the aid. This will be expenditure of such bodies which is included in payment applications, provided that, in line with Article 131(3) CPR, the public contribution has been paid to the enterprise receiving the aid.

The ceiling laid down in Article 2(10)(a) CPR refers to the aid granted within this particular operation only, and does not exclude that the same company had received other aid outside of the operation, which cumulatively could exceed EUR 200 000, provided that applicable State aid rules are complied with.

The option pursuant to point (10)(a) of Article 2 CPR could be implemented under any State aid regime or for *de minimis* aid, including:

- the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak;
- the General Block Exemption Regulation;
- the *de minimis* Regulations (EU) No 1407/2013, (EU) No 1408/2013, and (EU) 717/2014).

The specific reference to the *de minimis* regulations in Article 2(10) CPR was included to clarify that the derogation applies also in the context of *de minimis* aid. *De minimis* aid is deemed not to meet all the constitutive conditions of Article 107(1) TFEU. However, for the purposes of application of CPR, the notion of State aid includes also *de minimis* aid.

Decision of Member States to make use of Article 2(10)(a) CPR is without prejudice to the **obligation by the managing authorities to ensure compliance with State aid rules at each level**: when the funds are transferred by the managing authority to the ESIF beneficiary, and when the ESIF beneficiary grants the aid to the SME.

Under State aid rules, SMEs receiving aid under such schemes are the recipients of the advantage from public sources, and therefore are considered as beneficiaries under the State aid rules. Hence, while benefitting from simpler rules under the CPR, they need still to comply with requirements of the applicable State aid rules.

See specific replies on State aid to learn about the options available and applicable State aid requirements. See also replies concerning programme amendments in case programmes might need to be adjusted (e.g. in the section concerning principles of selection of operations or types of beneficiaries).

PL	We would like to introduce within TO3 specific projects to support SMEs affected by the effects of a pandemic or enterprises involved in providing products / services necessary within fight against a pandemic. We think about introducing OPs an individual grant project, where the marshal would be a beneficiary, who could support such companies through grants up to the amounts resulting from *de minimis*. We think of a non-competitive model of implementation within individual project and with selection of companies from specific branches. Would such scheme be compatible with the state aid rules?

Actions forming part of the response to the COVID-19 outbreak may be currently not covered by the programmes, e.g. as regards types of interventions or the main target groups or the indicators. It is as well possible that the Member State will have to amend its national eligibility rules in order to cover certain costs. Please consult the replies on the CRII Q&A website dedicated to the programme amendments under the tab “Structural Funds – horizontal questions”, under the “Programme amendments”. In particular, a reply “COVID-19 related programme amendments” may be useful.

Some actions fostering crisis response capacities in the context of the COVID-19 outbreak were quickly finalised, e.g. purchase of protective gear, medicines or medical equipment. They might have been physically completed or fully implemented before the beneficiary submitted application for funding. The first subparagraph of Article 25a(7) CPR introduced by Regulation (EU) 2020/558 under the CRII Plus package sets out that Article 65(6) CPR does not apply for operations that foster crisis response capacities in the context of the COVID-19 outbreak. This means that these operations can be selected even when they have been fully implemented or physically completed before the beneficiary has submitted the application for funding to the managing authority. By way of derogation from Article 125(3)(b) CPR, the second subparagraph of Article 25a(7) CPR introduced by Regulation (EU) 2020/558 under the CRII Plus package allows for selecting such operations for support under the ERDF or the ESF prior to the approval of the amended programme. Therefore, once these operations are selected (even when they are fully implemented or physically completed), the expenditure incurred by a beneficiary and paid as of 1 February 2020 is eligible for EU support, in accordance with Article 65(10) CPR as amended by Regulation (EU) 2020/460 under the CRII package.

It should be noted that Article 65(10) CPR, as amended by Regulation (EU) 2020/460, includes a derogation from Article 65(9) CPR, i.e. if these operations were not covered by the programme, the related expenditure is eligible as of 1 February 2020, and not from the date of submission to the Commission of the request for programme amendment or, in the event of application of Article 96(11) CPR, from the date of entry into force of the decision amending the programme.

Therefore, expenditure related to operations fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020, even if the relevant request for programme amendment was submitted to the Commission after 1 February 2020.

PT	As regards Article 25a(7) CPR proposed in the CRII Plus, are those operations also eligible before the submission of the amended program, notably when new eligibility or typologies are created through that amendment?

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

This reply has been updated on 29 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

This is the original text of the reply. This sentence was replaced or added as part of the update, and is therefore set in blue /underline. ~~This is deleted text and therefore strikethrough.~~

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

The ~~Commission proposal for the~~ new Article 30(5) CPR introduced by Regulation (EU) 2020/460 under the Coronavirus Response Investment Initiative 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~~[1].

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.

[1] As regards this deletion, in accordance with Article 25a(5) CPR that was introduced by Regulation (EU) 2020/558 under the Coronavirus Response Investment Initiative Plus, such transfers shall not be subject to the requirements on thematic concentration set out in the CPR or the Fund-specific Regulations.

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 pourrons 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?

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?

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.

The impact of including new types of operations that form a response to the COVID-19 outbreak, should be assessed on a case-by-case basis and depending on their scale and nature, it may be necessary to introduce new indicators or amend the targets of the current indicators. 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.

As regards the timing of such programme amendments, please consult the reply “COVID-19 related programme amendments” under the tab “Programme amendments”.

As regards changes in indicators covered by the performance framework, please consult the reply “Indicators’ targets in the context of crisis response” under the tab “Monitoring, reporting, performance framework”.

The Commission did not propose any additional reporting obligations focused on the response to the COVID-19 outbreak. The information on these projects should be presented in the annual implementation reports just as it is the case for any other projects covered by the programme. Please note that Article 50(2) CPR requires that the annual implementation reports shall set out key information on implementation of the programme and its priorities by reference to the financial data, common and programme-specific indicators and quantified target values, as well as any issues that affect the performance of the programme and the measures taken. The consequences of the COVID-19 pandemic and the need to redirect the EU funds to address them, may affect the performance of the programme (e.g. due to redirection of the EU support to such projects) and they should be addressed in the annual implementation reports of 2020 (to be submitted in 2021).

DE	Is there a need for new indicators or indicator changes in order to finance new actions responding to the crisis? Or can indicator changes be rather dealt with later on? Is additional reporting necessary?

The new Article 25a(9) CPR, derogates from the deadlines set out in the Fund-specific Regulations by postponing the deadline for submission of the annual report on implementation of the programme referred to in Article 50(1) CPR for the year 2019 to 30 September 2020 for all ESI Funds.

HR	Is there any indication at EU level regarding the deadlines for AIR submission considering all the steps that are now in question?

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 *[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.”]*

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?

These resources are not additional to the Member States’ envelopes. However, the Commission will not issue a recovery order where there would be an amount recoverable from the Member State following the acceptance of accounts submitted in 2020. In this way, the Commission is providing a quick liquidity injection to accelerate investments related to the COVID-19 outbreak.

NL	Can we speak of additional resources from the EU budget or does the initiative only consist of existing resources stemming from the Member States’ programming envelopes?

The Regulation (EU) No 460/2020 (CRII) does not entail changes to the existing co-financing rates, meaning that programmes will still have the agreed national co-financing rate. The Commission will continue to reimburse the payment claims in line with the co-financing percentages agreed in each operational programme. The amounts not recovered in 2020 will be cleared or recovered at the closure of programmes, on the basis of the eligible expenditure declared to the Commission.

NL	How does it work precisely; using this unrecovered prefinancing as national resources without changing European cofinancing percentages? Does this mean that we have to correct for this when closing the programmes in say 2025?

The additional possibilities provided by the amended Articles 3(1) and 5(1)(b) ERDF Regulation and the amended Article 37(4) CPR do not preclude financing other crisis-related actions which are already eligible under ERDF rules.

Please note that the extension, which makes it possible to **finance working capital**, is already quite broad and, as a general rule, should cover the needs identified by the SME sector. Support for working capital can be provided in the form of grants, repayable assistance or financial instruments if the recipient of such support is an SME and if such support is necessary as a temporary measure to provide an effective response to the coronavirus crisis. Support to short-time work schemes is eligible under the ESF (and covered by section 3.10 of the amended Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak).

Working capital could be understood as the difference between current assets and current liabilities of an enterprise. 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 (see: EGESIF 14_0041-1). This includes also costs such as cleaning of spaces, protective measures and adaptation of workplaces. Equipment which is necessary to provide an effective response to a public health crisis and is expected to be mostly depreciated over the period of the health crisis and its aftermath could also be included.

If the support 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 each specific case, as programme-specific conditions might require extending the scope of support in order to cover such new types of 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 under the current programme (either from 1 January 2014 or from the date of submission of the programme amendment request in the cases covered by Article 65(9) CPR).

In case the programme needs to be amended to extend eligibility to cover the working capital or another new scope, 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.

BG	Is it possible to provide funding for other crisis-related actions that are not specified in the proposed modifications of ERDF and CPR Regulations but could be identified by the SME sector?

As regards Regulation (EU) 2020/460 of 30 March 2020 (CRII):

All introduced amendments to CPR and ERDF/Cohesion Fund Regulations apply also to Interreg.

It is confirmed that new Article 30(5) CPR also applies to Interreg programmes.

With the exception of the amendments introduced in Article 30 (5) CPR, these amendments also apply to IPA-CBC, based on general (e.g. Article 33) and specific (e.g. Article 46) cross-references in Regulation 447/2014. However, none of the modifications applies to ENI-CBC. The Commission services are currently preparing specific acts to make all modifications also apply to IPA-CBC and ENI-CBC.

It is also confirmed that the amendment to Article 65(10) CPR (new subparagraph) applies directly to ETC and also - by interpretation of Article 43(4) of Regulation 447/2014 - to IPA-CBC.

As regards Article 25a of proposal COM (2020) 138 and and 120(3) CPR:

Paragraph (1) derogates from Article 60(1) and 120(3)(4th subparagraph) CPR, the latter setting the maximum co-financing rate for the ETC as well. Therefore, 100% EU co-financing to expenditure declared in payment applications during the accounting year starting on 1 July 2020 and ending on 30 June 2021 is possible also for ETC, with the exclusion of external cooperation programmes, i.e. ENI and IPA cross-border cooperation programmes.

Paragraphs (2), (3) and (4): ETC, IPA-CBC and ENI-CBC are not affected by any transfers between funds or between regions as the proposal does not derogate from Article 94 CPR establishing non-transferability of resources between goals. This is moreover clearly stated in Recital 5 of the COM proposal.

Derogation to requirements on thematic concentration at paragraph (5) apply to ETC, as well as derogation at paragraph (7), allowing for selection of operations fostering crisis response capacities in the context of the COVID-19 outbreak that were completed or fully implemented before applying for support, and allowing for these operations to be selected before the programme amendment is approved. All of that concerns of course the operations related to the anti-COVID-19 response. Both paragraphs also apply to IPA-CBC.

The discontinuing of amendments to Partnership agreement and of its consistency with programmes at paragraph (6) applies to all programmes falling within it. The paragraph is not relevant for ETC, even less for IPA-CBC and ENI-CBC.

The extension of the deadline for submission of annual implementation reports for the year 2019 to 30 September 2020 at paragraph (9) applies to all programmes including ETC and IPA-CBC, as well as paragraphs (8), (10), (11) and (12).

The flexibility introduced in Article 25a (12) CPR at the closure of the last accountong year also applies to ETC and (via Article 46(2) of Reg 447/2014) to IPA-CBC.

The Commission services are currently preparing a specific act to make Article 25 a (1) also apply to IPA-CBC and all relevant CPR amendments also apply to ENI-CBC.

IT	Could you make clear which are the changes to Regulation 1301/2013 and 1303/2013 introduced by Regulation 460/2020 and proposed by the COM(2020) 138 final - beyond the non-relevant ones and the non-applicability explicitly mentioned in the COM(2020) 138 regarding transfers (new (Article 25a(2)) of Regulation 1303/2013) - not applying to the ETC Objective nor to ENI programmes?
NL	It is not fully clear whether there are provisions under CRII (+) applicable to Interreg. Since there are no adjustments in ETC regulation and in CRII+ it explicitly states that resources under the ETC goal are excluded by the more flexible transfer options, we conclude that Interreg is excluded from CRII (+). If this is not the case and some provisions are applicable, could you please tell us which ones?

In accordance with the Regulation (EU) 2020/460 that introduced additional derogation in Article 65(10) CPR, all expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak shall be eligible as of 1 February 2020.

That Regulation also amended an ERDF investment priority under Article 5(1)(b) ERDF Regulation which now covers investments necessary for strengthening the crisis response capacities in public health services. This would encompass any operation that ensures an effective response to a public health crisis in the context of the COVID-19 outbreak. Support to the healthcare system includes, but is not limited to, investments in financing health equipment and medicines, testing and treatment facilities, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), medical devices, to adapt working environment in the health care sector and to ensure access to health care provided this support falls within the scope defined in Article 3(1) ERDF Regulation.

In addition, as regards the extended investment priority under TO1 in Article 5(1)(b) ERDF Regulation, fostering investments necessary for strengthening the crisis response capacities in health services, may cover any company. Such actions do not fall under productive investments as explained in the reply under the ERDF tab on “Support to companies in the health sector”.

It is possible to mobilise resources to address the public health crisis also within the existing scope of support of several thematic objectives under the ERDF, for example:

1. Under TO1, in addition to the proposed support fostering the crisis response capacities in health services, the ERDF may as well support coordinated research and innovation in healthcare, based on smart specialisation strategies.
2. Under TO2, the ERDF can support a wide range of e-health solutions.
3. Under TO3, the ERDF can support working capital in SMEs where necessary as a temporary measure to provide an effective response to a public health crisis related to the COVID-19 outbreak. Furthermore, the new scope of support proposed under Article 3(1) ERDF Regulation is not limited to TO3, but can be used under any other TO where SMEs are supported, as set out in the operational programme. In the context of the support to SMEs, it should be noted that under the CRII Plus, the ERDF Regulation was amended by Regulation (EU) 2020/558 in order align the support for undertakings in difficulty with the approach taken under the Temporary Framework for State Aid Measures to support the economy in the current COVID-19 outbreak and with rules for the granting of de minimis aid.
4. Under TO5, the ERDF can support investments to address specific risks, ensuring disaster resilience and developing disaster management systems (mostly ICT, which is also eligible under TO2). Preparedness in the form of support for equipment, infrastructure and training for response units is crucial. Such support could include investment in infrastructure (detection, early warning and alert systems) and acquisition of the needed studies, report, scientific data and knowledge to set up health-crisis related strategies, plans and programmes. It can also support information dissemination, capacity building of relevant stakeholders as well as health equipment and medical devices that are necessary for emergency response.
5. Under TO9, the first investment priority under the ERDF already covers investment in health and social infrastructure, which contributes to national, regional and local development, reducing inequalities in terms of health status. It may include a wide range of investments in supporting an effective response to the public health crisis resulting from the COVID-19 outbreak,g. investments in financing health equipment (such as ventilators), testing and treatment facilities, diagnostic laboratories and tests, disease prevention, e-health, the provision of protective equipment (such as respiratory masks, gloves and goggles), mobile health services, medical devices, adapting the working environment in the health care sector and ensuring access to health care for vulnerable groups. As regards medicines, please see a specific reply “Purchase of medicines, testing and treatment facilities” under the “Structural Funds – horizontal questions” tab. All investments should respond to identified needs at every level of healthcare, such as hospitals, primary care and ambulatory care.

TO9 may also cover the protective gear for the staff and volunteers in delivering non-medical essential services to the citizens, as in the current high level of health risk, this gear is necessary for an effective and secure delivery of these services.

1. Under TO10, the ERDF can support reinforcement of training infrastructure required for skill development of medical providers as a response to the current crisis.
2. Under TO11, the ERDF and the CF may provide support related to the implementation of the ERDF and CF support responding to the current crisis. The ERDF may as well strengthen institutional capacity and the efficiency of public administration where such support is provided by ESF in this regard.

As regards the ESF support, the ESF can provide ample support to address the COVID-19 crisis.

For instance, under thematic objective 9 (social inclusion), the investment priority set out in Article 3(b)(iv) ESF Regulation, that aims at enhancing access to services, including health care services, provides wide investment possibilities, notably to reinforce the capacity of these services to respond to this crisis, e.g:

- purchasing the necessary healthcare equipment, including protective equipment for health care workers;
- support to the provision of the healthcare services linked to the COVID-19 outbreak;
- recruiting additional staff for more and extended healthcare services;
- temporary wage support for staff recruited for controlling borders and other officials in charge of containing the spread of the virus;
- public communication and information.

In addition, the ESF may also be used to support the purchase of protective gear for public services, including, for instance staff or volunteers in delivering social assistance such as distribution of food aid to the most deprived as in the current high level of health risk, this gear is necessary for an effective and secure delivery of such services. Although these actions may be supported by the Fund for the European Aid to the Most Deprived, either under technical assistance, or according to the Commission proposal amending the FEAD Regulation (COM(2020) 141), outside technical assistance, together with the costs for purchasing food, given the limited amount of resources available under the FEAD, they may be also supported by the ESF.

Moreover, in order to ensure access to healthcare services that are effective and resilient, the ESF may support actions that limit social contacts in order to delay the spread of the coronavirus and avoid overloading the healthcare system, e.g.:

- short-time work schemes for workers in sectors directly affected by the public health ban to congregate (notably the hospitality sector- e.g. bars, restaurants, shops, etc.), but also for staff in aviation given the numerous restrictions to travel for the same reason;
- allowances for parents who can't work as they have to take care of their children whose schools closed;
- allowances for trainers whose trainings have been suspended, etc.

Under thematic objective 8 (employment), the ESF can also support short-time work schemes to maintain employment in sectors not directly at the forefront of combating the spread of the virus, but undergoing side-effects: e.g. suffering delays in delivery of supplies or facing a drop in demand (for more information see the Q&A on short-time work schemes). Moreover, the ESF can also support the development of new forms of working arrangements, including telework and other flexible work arrangements.

More information can be found in the '*Typology of indicative measures under the ESF and the YEI that can be mobilised to address the COVID-19 crisis'*.

The ESF may also provide support to actions addressing the socio-economic consequences of the COVID-19 outbreak. In particular, the ESF may support workers and self-employed persons who became unemployed by assisting in their reintegration in the labour market through lessons learned from this crisis by anticipating skills needs and contributing to tailor-made assistance and support in matching supply and demand in the labour market, transitional measures and mobility, as to ensure a swift recovery of the economy. As public employment services and other organisations involved in reactivation schemes will be faced with considerably higher demand for their services. ESF support can be channelled to the capacity building and modernisation of such services. These may include not only measures to expand their capacities (number of case handlers), but also actions to improve their efficiency (e.g. training of personnel and trainers, development of innovative services, reorganisation, etc.). The ESF could intervene in supporting sectoral networks between companies and social partners (i.e. joint actions) that can help foresee and manage change in an integrated manner and to support business networks and consulting for change management. Consulting services, plans for change in management, specialised training and other supportive services are examples of possible ESF intervention. Moreover, as this crisis is a health related crisis, the ESF can support the implementation of new insights regarding health and safety measures to prevent the outbreak of a similar crisis.

It should be noted that while the thematic objectives, investment priorities and the scope of support are defined in the CPR and in the Fund-specific rules, the scope of support that can be provided by the Funds is further defined in the programmes. In addition, in accordance with Article 65(1) 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."*

SI	In line with the proposed modification of the CPR, do potential new operations have to be linked only to an area of research and development under thematic objective 1 and an area of extension of eligibility for working capital under thematic objective 3? Or is there a room to address current challenges in other thematic objectives with all three funds (ESF, ERDF and CF)?
SI	Is eligibility of the new Covid-19 related, new operations/projects meant in the widest possible sense (everything related to measures against Covid-19 in member state can be eligible under the cohesion policy rules) i.e. services, purchase of equipment, works?
FR	Sur les dépenses éligibles : pourriez-vous confirmer que les dépenses de fonctionnement des hôpitaux comme les achats de masques, de petit matériel et surtout des dépenses salariales des renforts en personnels soignants et des heures supplémentaires de personnels sont bien éligibles depuis le début de la crise?

FR	Autre question pour confirmer ce que nous comprenons des textes : les équipements comme les masques ou autres, sont éligibles s'ils sont à destination des secteurs de la santé. C'est bien ça ? Car on a des demandes aussi de collectivités concernant des masques pour leurs agents. Hors du secteur de la santé, c'est négatif ?
LT	Concerning COVID-19 outbreak crisis, we would like to know your opinion if costs of personal protective equipment such as FFP3/FFP2 respirator masks, gloves, goggles are eligible to finance by ERDF under TO9?

Transfers - Article 30(5) and Article 25a(5) CPR

This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

The revised Article 30 of the CPR (Regulation (EU) No 1303/2013) 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.

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.

The Commission will apply all the flexibility allowed for within the current limits set by the CPR and the Fund-specific rules.

In addition to the flexibility provided for in Article 30(5) CPR, the Regulation (EU) 2020/558 (CRII+) introduces transfer possibilities between categories of regions and transfers between the ERDF, the ESF and the Cohesion Fund, in response to the COVID-19 outbreak. It is stated in Article 25a(4) CPR that for both type of transfers Member States should request for programme amendment through the procedure set out in Article 30 CPR and should submit revised programme or programmes.

In particular, as far as transfers between categories of regions is concerned, *Article 25a(3) CPR derogates from Article 93(1), allowing, in addition to the possibility provided for in the Article 93(2) CPR, transfers of resources available for programming for the year 2020 between categories of regions.*

For the transfers between Funds, Article 25a(2) CPR allows transfers of resources available for programming for the year 2020 for the Investment for Growth and Jobs goal between the ERDF, the ESF and the Cohesion Fund, derogating from the percentages at points (a) to (d) of Article 92(1) CPR and from requirements at Article 92(4) CPR.

~~*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.*~~

~~*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%

EE	It was mentioned yesterday and is stated in the summary as well, that in relation to flexibility and scope “3% can be moved between funds”. There is indeed a possibility in the CPR to transfer between categories of regions 3% (from which Estonia being one NUTS2 region cannot benefit from), but what is the legal basis for such a transfer between funds? “

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.

This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the ‘CRII Plus’ package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

Indeed, the CRII 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 thematic concentration is concerned, in accordance with Article 25a(5) CPR that is derogating from Article 18 CPR and Fund-specific Regulations, financial allocations set out in requests for programme amendments submitted or transfers notified pursuant to Article 30(5), on or after the entry into force of the CRII +, would not be subject to requirements on thematic concentration as set out in this Regulation or the Fund-specific Regulations.

Regarding 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 Fund-specific rules.* ~~*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).

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?

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?

This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

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?
PT	The 8% threshold transfer present in article 30(5) is applicable to the outgoing axis, meaning that if needed the axis that will be increased to support COVID measures can increase more than 8%. Is this correct?
FR	In the case of a transfer of funds from a priority axis to two other priority axes (e.g. Axis 1 funds are transferred to Axis 2 and 3), the 8 % threshold applies as a whole or separately to the two transfers to the two top priorities?
FR	In the case of several transfers from one priority axis to another priority at different times (e.g. a first transfer from axis 1 to 2 and a few months later a second transfer from axis 1 to 2), the 8 % threshold applies to each transfer or globally (i.e. for the two transfers with an interval of a few months)?

BE	In the case where the remaining funds where planned for tourism activities and should now be directed towards SMEs; in the case, where this means a transfer of the budget line from one axis to another is there a limit to this transfer and can it be accepted without an OP amendment?

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?
PT	Taking into account that we have several OP under last steps of OP amendment decision after the performance framework allocation and that those decisions will be finished previous to the submission to the Monitoring Committee of COVID reprogramming exercise it's not understandable why we should not consider the most update COM decision ate the time of reprogramming proposal (instead of the 1st of February situation)

This reply has been updated on 24 April 2020 to reflect the changes following from the adoption of the amendments as part of the 'CRII Plus' package (Regulation (EU) 2020/558). The text added or changed during the update is set in blue and underlined.

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.

Finally, Article 25a(1) CPR, included in the CRII +, introduces the possibility for Member States to request that 100% co-financing rate is applied to expenditure declared in payment applications during the accounting year starting on 1 July 2020 and ending on 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

Such requests shall be made through the procedure for amendment of programmes set out in Article 30 CPR and be accompanied by the revised programme or programmes. The 100% co-financing rate would apply only if the corresponding programme amendment is approved by the Commission at the latest before the submission of the final application for an interim payment in accordance with Article 135(2) CPR, i.e. at the latest on 31 July 2021. If payment claims were submitted and paid for the accounting year before the OP amendment is approved, then a correction upwards of the amount paid during the accounting year will be made when processing the final interim payment claim. In addition, Member States will have to notify the table referred to in Article 96(2)(d)(ii) CPR (i.e. the table specifying for the whole programming period, for the OP and for the Priority axes, the amount of support of the funds and the national co-financing), confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100%, before submitting the first payment application for the accounting year starting on 1 July 2021. This notification will allow that co-financing rate to be applied by priority axis to future payment claims submitted from 1 July 2021 onwards.

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)?

Article 30(5) CPR sets the limits for transfers between priorities of the same programme under the same fund to 8% of the allocation of the outgoing priority and a total 4% of the programme allocation. For this purpose, for ETC tables 16, 17 and 18 and for IGJ tables 18a, c and 19 under Section 3 of the OP have to be modified and notified to the Commission. No modification of the Financing Plan at table 15 for ETC and 17 for IGJ is required. However, the transferred amounts cannot be higher than the amounts set in Table 15 ETC and 17 IGJ for the year 2020.

FR Interreg	How can a 2020 tranche be defined at the level of a priority axis, whereas this information does not exist at the level of priority axes in the operational programme: in the OPs, the annual tranches are defined at the global level (Table 15).

The new Article 30(5) CPR provides for possible limited transfers between priorities only. In this case, a notification of the revised financial tables to the Commission via SFC is sufficient. If, as a consequence of such amendments, also a reallocation between TOs is needed, only in that case it can be done within the above mentioned notification and does not require approval by Commission decision. All other transfers require approval by Commission decision.

FR **Interreg**	Can you confirm that we can make use of the transfer option offered by the new Article 30(5) for transfers between thematic objectives from the same priority axis. If this is the case, how should we apply the modalities for the calculation of the 8 % cap. Is this percentage to be applied to the initial amount foreseen for this TO in the priority axis concerned? What about the concept of tranche 2020 for a thematic objective, given that we do not know how to define it at the level of a priority axis?

Transfers - Article 25a(2)-(3) and (13) CPR

The special allocation for the outermost and northern sparsely populated regions is part of the resources for the Investment for growth and jobs goal in accordance with Art 92(1)(e) CPR. However, given their specific purpose, the Commission proposal for Article 25a(2) CPR (proposal COM(2020)138) does not derogate from point (e) of Article 92(1) CPR, and therefore is excluding transfers from and to the special allocation for the outermost regions (please also see recital (5) of the proposal).

Nevertheless, in accordance with Art 25a(2) and (3) CPR (proposal COM(2020)138), the Commission is proposing to introduce or enhance the possibility for financial transfers between the ERDF, the ESF and the CF. Furthermore, transfer possibilities between categories of regions would also be exceptionally increased. Therefore, resources from ERDF and ESF mainstream allocations can be transferred to the mainstream allocation of the outermost regions.

FR	Is it possible to transfer ERDF or ESF to the specific allocation for outermost regions?

Co-financing rate - Article 25a(1) CPR

Article 25a(1) CPR, introduced by Regulation (EU) 2020/558 provides for a possibility to increase the co-financing rate up to 100% to one or more priority axes of a programme. It is under the remit of the managing authority to decide, within the limits of state aid rules and in the respect of transparency, non-discrimination and equal treatment between beneficiaries, how specific operations will be supported in terms of public support, including support from the Cohesion policy Funds.

It is recalled that Article 129 CPR sets a requirement that the Member State shall ensure that by the closure of the operational programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds paid by the Commission to the Member State.

See also the sections ‘COVID-19 and force majeure’and ‘Ongoing implementation - eligibility & flexibility’ above (e.g. change of conditions for suport as suggested).

PL	Will the article 25a(1) apply directly only to financial relations between Member States and the Commission? The change in co-financing rate does not apply directly to individual projects. It means that Member States may still feel free to set the level of the EU co-financing for individual projects. In projects where beneficiaries have difficulties in providing their own financial contribution MAs may raise the level of co-financing even up to 100%, while in other projects - both currently implemented and the new ones - co-financing rate may be established at the lower level. Please confirm.

According to Article 25a (1) CPR in the Commission proposal (2020)138 to amend the CPR, Member States shall notify the table referred to in Article 96(2)(d)(ii), confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100%.

If however such a notification is not done within the established deadline, the Commission will not be in a position to continue applying the increased 100% co-financing rate as its possible duration is limited by the CPR to the accounting year ending on 30 June 2021. The Commission will thus reimburse support from the Funds according to the financing plan that was applicable during the accounting year ending on 30 June 2020.

PL	What will happen if the Member State does not submit such a request within the required time limit? Will the EC modify the financial tables and co-financing rate itself?

The notification to the Commission of the table referred to in Article 96(2)(d)(ii) CPR, confirming the co-financing rate which was applicable during the accounting year ending on 30 June 2020 for the priorities concerned by the temporary increase to 100% in accordance with Article 25(a)(1) CPR should be done via the standard SFC module for programme amendments. This table does not require an approval by the Commission as it is the table that was applicable during the accounting year ending on 30 June 2020. This table was already approved by the Commission prior to the temporary application of the 100% co-financing rate.

FR	*Sous quelle forme la notification du nouveau plan de financement du PO doit-elle intervenir ? Un module spécifique dans SFC est-il envisagé ?* In what form should the notification of the new financing plan of the OP take place? Is a specific module in SFC envisaged?

Article 25a(1) CPR, as introduced by the Regulation (EU) 2020/558 under the Coronavirus Response Investment Initiative Plus, does not restrict the temporary application of a 100% co-financing rate to the priority axes that support projects related directly to the COVID-19 outbreak. The aim of this proposal is to alleviate the burden on public budgets responding to the crisis situation, as explained in recital (4).

The requests for the temporary increase of the co-financing made shall be made through the procedure of the programme amendment in line with Article 30 CPR. Therefore, the request for programme amendment should be duly justified by the Member State.

DE	Does the temporary application of 100% co-financing from the EU budget for the implementation of cohesion policy programmes concern all (including on-going) measures or only dedicated CRII measures?
RO	Does 100% co-financing concern only priority axes supporting response to the COVID-19 outbreak? Is it necessary to present justification relating to the response to COVID-19?

As regards the question from Estonia and the second question from Romania and Poland, after 30 June 2021, the national contribution will not have to be increased in order to compensate for the higher co-financing rate that would be applied between 1 July 2020 and 30 June 2021. The temporary application of the 100% co-financing rate to the chosen priority axes will work as a speeding up of reimbursement of the EU resources for the accounting year that starts on 1 July 2020 and ends on 30 June 2021.

In accordance with Article 25a(1) CPR introduced by the Regulation 2020/558, Member States must submit requests for modification of the co-financing rate through the procedure for amendment of programmes set out in Article 30 CPR. Such request must be accompanied by the revised programme or programmes. The 100% co-financing rate will only apply if the corresponding programme amendment is approved by the Commission at the latest before the submission of the final application for an interim payment in accordance with Article 135(2) CPR (in this case the submission of the final application for an interim payment has to take place before 31 July 2021).

For the following accounting years, i.e. 2021-2022, 2022-2023 and 2023-2024, the co-financing rate for these priorities will be brought back to the level that was applicable before the temporary application of the 100% co-financing rate. To this end, and in line with Article 25a(1) CPR introduced by Regulation 2020/558, Member States must notify the table referred to in Article 96(2)(d)(ii), i.e. it does not require a full programme amendment procedure as set out in Article 30 CPR.

The example provided by Estonia is in substance correct. The temporary increase of the co-financing rate to 100% in the accounting year 2020-2021 will speed up reimbursement of the EU resources, but it will not increase the total Funds' allocation for the programme, and it will not have to be compensated by an increase in the national contribution. In practice, applying the temporary 100% co-financing rate will mean that:

- the total contribution from the Funds will be reached sooner than without it;
- the average EU co-financing rate for the whole programming period will be higher than initially planned, and consequently, the national co-financing will be proportionally lower, what would be possible thanks to the derogation from Article 120(3) CPR in the proposed Article 25a(1) under the CRII Plus package. The lower national co-financing will result, consequently, in a lower total volume of investments than initially planned.

As regards the first question from Romania, the proposed Article 130(3) CPR ensures that the total contribution from the Funds paid out through payments of the final balance to a programme shall not exceed the eligible public expenditure declared and the contribution from each Fund and category of regions to each operational programme as laid down in the decision approving the operational programme, while providing up to a 10% flexibility between the allocations of priorities of the programme.

It is also important to keep in mind that in accordance with Article 129 CPR Member States have to ensure that by the closure of the operational programme, the amount of public expenditure paid to beneficiaries is at least equal to the contribution from the Funds and the EMFF paid by the Commission to the Member State. At closure Member States therefore need to ensure that the entire contribution they have received from the Funds and the EMFF has been passed on to beneficiaries.

Moreover, as the financial table that will be applicable for the 2021-2022 accounting year will be the one that is applicable at the end of the 2019-2020 accounting year, there is no need to amend the targets for the indicators, including the financial indicator, in the performance framework. 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.

<table>
<tr><td>RO</td><td>Can you please clarify how the temporary application of the 100% co-financing rate will work in practice and the link, if any, with the other new flexibility which concerns the possibility for payments to exceed by 10% the allocation of a priority at programme closure? In the remaining years following the application of the 100% EU contribution, would the national contribution need to be increased proportionately in order to remain within the overall financial framework of the programme?</td></tr>
<tr><td>EE</td><td>Do we understand correctly, that if the 100% EU co-financing rate option is implemented the total contribution for the accounting year 2020-2021 would decrease (in 2021) on the account of lower rate of national contribution. Is the below example correct (initial EU co-financing rate 75%)?
<table>
<tr><td></td><td>Year</td><td>EU contribution (EUR)</td><td>National Contribution (EUR)</td><td>Total Contribution</td></tr>
<tr><td rowspan="3">Now</td><td>2020</td><td>75</td><td>25</td><td>100</td></tr>
<tr><td>2021</td><td>75</td><td>25</td><td>100</td></tr>
<tr><td>TOTAL</td><td>150</td><td>50</td><td>200</td></tr>
<tr><td rowspan="3">After the OP AMD</td><td>2020</td><td>100</td><td>0</td><td>100</td></tr>
<tr><td>2021</td><td>50</td><td>16,67</td><td>66,67</td></tr>
<tr><td>TOTAL</td><td>150</td><td>16,67</td><td>166,67</td></tr>
</table>
</td></tr>
<tr><td>PL</td><td>
Will the Member States have to request for modification of the co-financing rate through the procedure for amendment of programmes?
What will be the expected new level of the EU co-financing: generally the same as the current one (in case of Poland 80-85%), or maybe lower in order to "compensate" this temporary increase of the EU co-financing rate to 100% of eligible expenditure? The reply is provided in art. 25a, par.1.
What about the following accounting years (i.e. after 1 July 2021)? Will the financial tables of the operational programmes have to be changed once again?
</td></tr>
</table>

Retroactive selection - Article 25a(7) CPR

With a view to ensuring an effective use of ESI Funds and reducing the risk to the budget of the Union, Article 65(6) CPR does not allow for the selection (and thus financing) of operations that have been physically completed or fully implemented before the application for funding by the beneficiary under the programme was submitted to the managing authority.

However, in the current exceptional situation of the coronavirus outbreak the Commission proposed that this should exceptionally be allowed to ensure that expenditure of **operations already physically completed or fully implemented can receive EU support if they are aimed at fostering the crisis response**. This means that operations for example where medical equipment is purchased, and the purchase was already made before the entry into force of the amending proposal, could become eligible for EU support retroactively. Expenditure for such an operation would still need to be incurred and paid within the period of eligibility applicable under a given programme and State aid rules – see further below.

In order to benefit from the proposed derogation, the operations would need to comply with both the applicable State rules and the CPR:

As regards State aid, the Temporary Framework applies to all relevant notified measures as of 19 March 2020 even if the measures were notified prior to that date.

The amendment adopted on 3 April 2020 does not change this application date. However, as it introduces flexible rules for COVID-19 related investment aid, under sections 3.6 (COVID-19 relevant research and development), 3.7 (testing and upscaling infrastructures) or 3.8 (production of COVID-19 relevant products), it clarifies how the incentive effect of the aids has to be assessed in such cases.

For investment projects covered by these three sections, the incentive effect of the aid is presumed for projects started as of 1 February 2020, and all expenditures relating to the projects are eligible if in line with the definition of eligible costs under the relevant section of the Temporary Framework.

For investment projects started before 1 February 2020, they can receive aid under the Temporary Framework, but such aid is considered as having an incentive effect only if it is necessary to accelerate or widen the scope of the project because of the COVID-19 outbreak:

- that excludes de facto aid for fully implemented operations;
- only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid: that means for a project already started before 1 February 2020, expenditures already incurred that cannot be considered as additional costs in relation to the acceleration or the widened scope of the project cannot be considered as eligible.

As regards the CPR, the first paragraph of the proposed Article 25a(7) CPR provides a derogation from Article 65(6) CPR thus making it possible for the managing authority to select an operation which is physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority. This derogation applies only for **operations fostering crisis response capacities in the context of the COVID-19 outbreak** and does not apply to all other operations, to which Article 65(6) CPR continues to apply. Provided that the State aid rules are complied with, expenditure related to such operations would be eligible:

- as of 1 February 2020 if the programme needs to be amended to extend eligibility to cover the new scope. The necessary programme amendment and the related State aid notification may be adopted later, without delaying deployment of measures.
- As of 1 January 2014 or as of the date of submission of an amendment which made such expenditure eligible prior to 1 February 2020, when the scope was already included in the programme or a submitted programme amendment proposal. The specific area 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 (types of actions and beneficiaries). 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 (and in this case, the eligibility date would be as of 1 February 2020).

Therefore, expenditure incurred and paid prior to 1 February 2020 for operations fostering crisis response capacities in the context of the COVID-19 outbreak (e.g. costs of IT system development needed for teleworking arrangements) might be eligible if the expenditure was already eligible under a given operational programme prior to 1 February 2020, including when the operation is already completed or fully implemented on that date. In the latter case, such operations cannot receive State aid under the Temporary Framework.

<table>
<tr><td>PT</td><td>In accordance with the Temporary Framework (Commission communication of 3.04.2020) “For projects started as of 1 February 2020, the aid is deemed to have an incentive effect; for projects started before 1 February 2020, the aid is deemed to have an incentive effect, if the aid is necessary to accelerate or widen the scope of the project. In such cases, only the additional costs in relation to the acceleration efforts or the widened scope shall be eligible for aid; The following amendments to the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak will take effect as of 3 April 2020.”

Can fully implemented operations be supported under the Staid Aid Temporary Framework, as allowed by the Regulation (EU) 1303/2013 amendment, before the notification of the scheme notification and / or before 3 April 2020?

Can the projects where the aid is necessary to accelerate or widen their scope started before 1 February 2020 have eligible expenditures before that date?</td></tr>
</table>

Article 139(7) CPR

In line with the revised Article 139(7) of the CPR, supported by recital 8 of regulation (EU) 2020/460, 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 for 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.

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?
HU	How, when and on what basis could the Commission or the European Court of Auditors control/audit whether the given Member State has complied with this criteria? Is there a sanction if a Member State fails to comply with this requirement?
FR	How should the traceability between the amounts of the unrecovered pre-financing and the expenditure of Covid-19 be ensured?

Normally, in case the calculation of the balance in accordance with Article 139(6) CPR results in a negative amount, a recovery order is issued. In case the amount due will be offset against future payments the recovery order is still issued. In accordance with the proposal, a recovery order for amounts to be recovered following the acceptance of the accounts will not be issued. As a result no amounts will be offset against future ones.

The calculated amounts to be recovered remain on the bank account of the Member State to provide liquidity to the Member State to finance measures related to the COVID-19 crisis. No additional report or submission of information has been foreseen in the legislation.

DE	What happens if the COM does not issue a formal recovery order according to Art. 139 CPR because a member state is offsetting against amounts due to the Member State according to Art. 139 para 7 regulation CPR? In this case, is the factual settlement amount used?

DE	Will the calculated amount to be recovered by the Member State related to accounting year 2018/2019 stay as a matter of routine on the bank account of the Member State? Is it correct, that no additional report or submission of any additional information is necessary?

The additional subparagraphs in Article 139(7) CPR, as introduced by Regulation (EU) 2020/460, set out that the Commission shall not issue a recovery order from amounts recoverable form the Member State for the accounts submitted in 2020 and that these amounts shall be used to accelerate investments related to the COVID-19 outbreak. Recital (8) of that Regulation explains that the aim of this amendment is to ensure that Member States have sufficient financial means to make the investments needed without delay. These resources will be made available to the Member State, regardless of their progress in implementation of the EU resources. It is up to the Member State to decide how to make the best use of the unrecovered amounts in a timely manner and what types of investments are best suited as a response to the current public health crisis. These amounts shall be cleared and recovered at closure, on the basis of the eligible expenditure declared to the Commission.

When all EU resources are already committed, the Member State may decide to modify the on-going projects or redirect the EU resources to other projects that are related to the COVID-19 outbreak. As regards the question on the types of investments that can be supported by the unrecovered amount, both ERDF and ESF may provide such support as long as the operations comply with applicable law. In accordance with Article 65(1) CPR, the eligibility of expenditure is determined on the basis of national rules, except where specific rules are laid down in, or on the basis of, the CPR or the Fund-specific rules.

HU	Could the Commission clarify the 2nd part of the modification of Article 139 (7)? How would this provision apply in case of those Member States, which have already committed 100% of their allocation? Does this obligation foreseen in this paragraph mean that in the framework of the CPR the Commission can oblige Member States to implement 100% national funded projects?
HU	What does investment exactly mean? Does it mean only ERDF types of measures or soft, ESF types measures as well?
FR	Should the mobilisation of the CRII only cover expenditures that are earmarked for the response to the health crisis, or can it be considered for other types of expenditure; in particular those accompanying the exit from the crisis or financial support mitigating the consequences of the crisis on ongoing projects, which are also made necessary by the Covid-19 pandemic (to improve the general cash flow of the programmes in order to further ease the policy of advances and reimbursements to programme promoters)?

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.

EE	*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.*

In line with Article 37(4) CPR, all types of enterprises are potentially eligible for working capital support through financial instruments. However, as far as non-SMEs (mid-caps and large enterprises) are concerned, there may be certain limitations, on the possibility of using ESI Funds to provide support, stemming from Fund-specific rules and from State aid rules. In addition, the relevant programme and priority axis may restrict support to SMEs. (See: EGESIF_14_0041-1, section 2.1.1). Article 2(6) of Regulation (EU) 2015/1017 defines the small midcap companies as entities having up to 499 employees that are not SMEs while, according to Article 2(28) CPR, SMEs are defined in the EU Recommendation 2003/361. We recall that there is no definition of mid-caps under the CPR and Fund-specific rules and the distinction is only between SMEs and non-SMEs, hence the small mid-caps are to be treated as non-SMEs. This does not preclude the relevant programme, priority axis or national rules from providing for specific treatment of small midcaps. Therefore, support to midcaps through financial instruments can be eligible under the current rules subject to all applicable provisions being complied with.

Article 37(4) CPR allows for ERDF-funded working capital support through financial instruments to all types of enterprises regardless of their size, including large enterprises and midcaps. The CRII and CRII+ Regulations do not bring any change in this regard.

Both the CRII and CRII+ proposals introduce some additional flexibility and clarification on MS providing working capital support through grants (only) to SMEs (amendment of Article 3(1) ERDF) and working capital support to SMEs through financial instruments if necessary as a temporary measure to provide an effective response to a public health crisis (amendment of Article 37(4) CPR). The scope of these amendments does not affect the currently applicable ESIF framework for support to large enterprises.

Similarly, the CRII and CRII+ proposals do not provide any specific amendment in regard to support to mid-caps and large enterprises through equity products of ESIF-funded financial instruments.

In conclusion, ESIF support for working capital in enterprises, as for any investment financing to enterprises through financial instruments, is subject to compliance with two basic eligibility criteria: the types of enterprise and support targets. Article 37(4) CPR does not limit such support only to SMEs and defines the scope of targeted activities that could be supported by ESIF financial instruments, in accordance with the CPR provisions, other applicable Fund-specific and State aid rules (as modified to address the COVID-19 public health crisis and to address specifically, for all types of firms, working capital needs, including through financial instruments).

CZ	CZ MA in the envisaged OP amendment reflecting the COVID-19 situation intends to reallocate funds to a financial instrument for SME support. The intended support should also be directed to small mid-caps as defined in Article 2(6) of Regulation (EU) 2015/1017 of the European Parliament and of the Council. Is this support eligible under current rules?
SK	For large enterprises, working capital support to cover such salaries expenditure would be eligible from ERDF only if provided in the form of financial instruments. See: financial instruments guidance on working capital." Would you please provide details about the legal basis and specify eventual limitations for such financial instruments?"
LV	Due to the COVID-19 pandemic impact on the economic situation, we have identified the need to finance operations for the mid-cap companies (250-3000) that are viable in the long-term in the form of equity type products (equity investment, quasi-equity investment, venture debt etc.). Equity investments will be mainly targeted to foster the availability of liquidity for the midcaps. Taking into consideration that there are significant limitations for large enterprises on the possibility of using ESI Funds from Fund-specific rules and from state aid rules, we would like to ask you for clarification for possible support to mid-caps and large enterprises in the context of COVID-19 regulation. Good practice examples, how the ERDF can finance mid-caps companies through financial instruments, considering the restrictions set by the ERDF, would be helpful.

The Public Procurement directives provide for a full set of different possibilities to tackle efficiently different urgency situations. More information can be found in the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 adopted on 31 March 2020. This guidance focuses especially on procurements in cases of extreme urgency, which enable public buyers to buy within a matter of days, even hours, if necessary. This reply complements the guidance in the specific context of financial instruments.

First, public contract modifications aiming to "save" the current public contracts are, in principle, acceptable. Such modifications would be e.g. extensions of the delays to execute the contract, changes in conditions of payments and other minor modifications **that have become necessary because of the crisis**.

When the proposed modifications go beyond saving the contract, but intend to adapt it to the current situation, such a change could in principle be acceptable only if the overall nature of the initial contract is not modified. Acceptable changes include raising the amounts of the initial contract value when providing working capital to SMEs hit by the COVID-19 crisis or other crisis-related changes. For example, if the initial public contract was to provide working capital to SMEs in a specific region or in a specific sector, it could, in general, be acceptable to raise the amounts by up to 50% or when the public contract was valid until a certain date, it could be justified to extend it by 6 months.

On the contrary, modifications that would change the overall nature of the contract would not be acceptable. Such modifications could be, for example, that the public contract is modified to apply to a new category of SMEs (and no longer only to the SMEs of the original sector of production) and to another region (in addition to the originally defined one) or is extended to cover not only working capital but also to provide financing for investment.

Below you will find a non-exhaustive list of possible solutions, which could help managing authorities to decide on the most appropriate amendment or procurement procedure in a context of financial instruments. The options available to managing authorities planning to amend an existing financial instrument operation or set up a new one, would depend on what type of body implements the financial instrument, what is covered by already existing public procurement contract (if a financial instrument already is in place) and the type of financial instruments. It is important to note from the outset that modifications of public procurement contract should ensure the proper execution pertaining to the original overall nature, and not to answer to needs of new services. For such new needs, new public procurement procedures need to be followed unless other exceptions apply.

1. **direct award to public financial institutions or EIB/EIF/IFI**

There are certain flexibilities already in place.

For all types of financial products, managing authorities already have the possibility **to award contracts directly** to a body implementing financial instruments supported through the ESI Funds either if such body is the EIB/EIF/IFI (and thus falls outside public procurement rules) or based on the exceptions of the Public Procurement Directive 2014/24/EU, including its Article 12, as further clarified in the Omnibus Regulation through Article 38(4)(b) CPR.

In such situations, the increase of the existing contract value (if you decide to top-up the existing financial instrument) can be made according to the conditions of the contract and no further restrictions would apply.

1. **selection of commercial banks for guarantee instruments**

For guarantee instruments, the selection by the guarantor (who is a contracting authority) of commercial banks providing loans **does not fall under the scope of the public procurement directive** if the following conditions are fulfilled cumulatively:

- there is absence of a service provided to the contracting authority in the meaning of the Public Procurement Directive, and therefore the non-applicability of Public Procurement Directive stems from the fact that the contracting authority, e.g. a **national promotional banks/institution** (NPB/NPI) does not purchase a clearly defined service, e.g. when it provides a guarantee to all banks as a **form of subsidy** to the banks;
- the concerned guarantee is given or even sold to the commercial banks in order to facilitate and incentivise the granting of loans to final recipients **in line with their normal lending procedures**, meaning that the contracting authority **does not impose any additional obligations** with regards to the eligibility of lending conditions or of potential borrowers;
- there is no mandatory (range of) target amount of lending or other enforceable obligation of result; for example, no sanctions or repercussions are provided for with regards the commercial banks in case the targeted amount of loans is not issued/achieved.

For guarantee instruments, when the selection of the commercial bank is done by the final recipient, before or after the latter has requested and received a guarantee from the Guarantee Fund manager (e.g. NPBI that is also a contracting authority) then, such selection **does not fall under the scope of the public procurement directive,** because it is not done by the NPBI but rather by the final recipient. Therefore, it is clear that there is no service performed for the NPBI because the NPBIs and the commercial banks are not in any form of direct relationship.

1. **Possibility to modify the contract under Article 72 PPD.**

We should differentiate between two types of situations:

- if the modifications would concern adding a new subject matter, then such modifications are are subject to public procurements rules; the different possibilities outlined in the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis, most notably accelerated procedure and negotiated procedure without publication, are possible when properly justified.
- if the subject matter/overall nature of the contract remains the same, then:

1. Article 72(1)(a) could be used provided that such an option, e.g. to “top-up”, irrespective of its monetary value, was included in the initial procurement documents (this means already from the publication, in the procurement documents and not just in the contract) defined specifically in *clear, precise and unequivocal review clauses*, which may include price revision clauses, or options. Such clauses must state the scope and nature of possible modifications or options as well as the conditions under which they may be used, or
2. Article 72(1)(b) could be used by a contracting authority provided the latter could justify both that the additional services have become necessary and that a change of a contractor cannot be made. “Additional services” does not mean ‘new’ rather it means ‘more’ (of the same type of) services.”
3. Article 72(1)(c) could be used, provided that the contracting authority demonstrates that the need for modification has been brought about by circumstances which a diligent contracting authority *could not foresee* and the increase in price related to such extension, is not higher than 50% of the value of the original contract. Where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive.

In the view of the Commission, in the case that **if the original contract covered only support in the form of working capital**, then an increase in the value would not change the subject matter. If the contract covered both the subjects of working capital and another subject matter such as financing of investments, then the conditions for the modification must not change which element would be the main subject.

On the contrary, as explained above, if the original contract did not cover support in the form of working capital at all, then the subject matter would be considered as new and therefore cannot be introduced in the contract by way of modification.

However, all the above possibilities need to be examined on a case-by-case basis.

1. **Using accelerated procedure to sign new contracts for new amounts.**

If the options discussed above are not possible, the fastest way to sign new contracts for new amounts would be the accelerated open procedure under Article 27(3) of the Public Procurement Directive which allows to have the contracts signed within one month as the time frame for the bidders is reduced to 15 days from the date on which the contract notice was sent. Use of this procedure requires checking the fulfilment of the conditions therein.

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 FI?
SK	Statement that the free-of-charge guarantees (for the beneficiary) do not have to be subject of procurement (while SK believes that everyone is of this opinion, they would need a paper stating so to be able to avoid procurement which is extremely lengthy).
BG	Consider possibility under Directive 24/2014 and, respectively the local public procurement law to allow an exception for selection of financial intermediaries without PPA procedure

SI	Due to the fact that existing FI operation consists also of measures for SME 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?

We understand that according to the current set-up of the financial instrument, the managing authority requests the first and subsequent interim payment on the basis of the funding agreement signed with the body implementing the fund of funds. We also understand that the operational choice of the fund of funds is to disburse the programme resources paid to the fund of fund further to the specific product funds irrespective of the progress (this is opposite to keeping the amount of resources at the level of the fund of funds to cover the financial needs of faster implementing financial instruments).

This decision on the operational structure is made by the national authorities and **it can be adjusted during implementation** if due to the crisis or to any other reason the current structure no longer fits the purpose. The managing authority could in particular restructure the financial instrument from the current single fund of funds structure into a number of instruments. This would make it possible to channel funds in line with the individualised investment needs in each of such instruments (as the thresholds for the second and subsequent tranches would apply independently for each of such instruments). This would be in line with the provisions of Article 41(1)(c) CPR which refer back to the thresholds to be applied on the “amounts included in the first application for interim payments” or “previous applications”. The funding agreements would need to be modified accordingly, but this should not have any impact on deployment on the ground and, if the first tranche had been distributed proportionally among such instruments, without any need to do any financial adjustments as regards the already transferred first tranche.

If the managing authority prefers to retain the current structure with the fund of funds, it may contribute additional resources from the prefinancing received from the UE budget for the programme to the fund of funds to pay to the well performing financial instrument to incur eligible expenditure in order to reach the required threshold and to de-block the possibility to claim the next tranche according to Article 41(1)(c) CPR.

SK	The possibility to declare expenditure at the level of instrument or priority for a tranching. That would release the cash problems SK has. Currently there is a number of instruments blocked due to the impossibility of tranching at the level of instrument/tranching. In the current situation, too much energy and time is spend on reallocating the money around due to the blockages caused by a few slow instruments.

As regards support for fully implemented or physically completed operations:

The derogation to Article 65(6) CPR introduced by the proposed Article 25a(7) CPR is applicable to all operations, including financial instrument (FI) operations. We recall, however, the definition of such FI operations in Article 2(9) CPR, which refers to the programme contribution from the managing authority to the financial instrument and subsequent cascaded down to the final recipient support.

Regulation (EU) 2020/558 (CRII+) introduced the amendment (Article 25a(7) CPR) that Article 65(6) CPR does not apply to **operation s for fostering crisis response capacities in the context of the COVID-19 outbreak,** i.e. allowing to select and thus fund operations retrospectively. Article 65(10) CPR (as amended by Regulation (EU) 2020/460 (CRII)) provides that expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020.

Considering that Article 65(6) CPR introduces a general principle throughout the CPR against retroactive operations, i.e. selection of operations that have already been fully implemented or physically completed when the beneficiary submits the application for funding to the managing authority, that does not exclude explicitly any forms of support, such as financial instruments; and considering that Article 37(5)[1] CPR is not drafted as a derogation from Article 65(6) CPR, we view it as a clarifying provision indeed. In such case, the amendment introduced by the CRII+ Regulation should apply *mutatis mutandis* to financial instrument operations, too. Thus, for FI operations fostering crisis response capacities in the context of the COVID-19 outbreak, Article 37(5) CPR should not apply. Consequently, provided that such investments fostered/continue to foster crisis response capacities in the context of the COVID-19 outbreak, they could be selected, even if the investments that are to be supported through financial instruments are physically completed or fully implemented at the date of the investment decision, i.e. retroactively as from 24 April 2020, when the CRII+ Regulation entered into force. Expenditure for such operations fostering crisis response capacities may be eligible as from 1 February 2020.

Where the said investments are COVID-19 relevant research and development, investment aid for testing and upscaling infrastructures, investment aid for the production of COVID-19 relevant products, for which support is found to be State aid under the Temporary Framework, they cannot be financed if already fully implemented. If started before 1 February 2020 and not completed, they can get support in compliance with the specific conditions of sections 3.6, 3.7 and 3.8 of the Temporary Framework.

As regards **refinancing**:

The CPR does not envisage the possibility of supporting the refinancing of existing loans for the following reasons:

It follows from Article 37(1) CPR that financial instruments should be implemented to support investments which are expected to be financially viable and do not give rise to sufficient funding from market sources, therefore justifying the need for public intervention. The existence of an initial loan proves the existence of sufficient funding from market sources for carrying out the investment. Therefore, an ESIF programme loan refinancing an existing loan (or an ESIF programme guarantee for an existing loan) is not justified.

Only in the situation set out in Article 37(6) CPR, the reorganisation of a debt portfolio in certain infrastructure investments is considered possible.

In addition, Article 42(1)(b) CPR refers to resources committed to guarantee contracts covering a multiple amount of underlying new loans for new investments in final recipients.

From the State aid perspective, the refinancing of existing loans is not excluded in the current circumstances in the case of aid in the form of guarantees of loans, or guarantees and loans channelled through financial intermediaries under the Temporary Framework, provided the conditions foreseen in sections 3.2, 3.3 and 3.4 of the Temporary Framework are complied with.

However, as a result of the combined reading of the amendments in paragraph (10) and (6) of Article 65 CPR, introduced by the CRII and CRII+ respectively, refinancing is possible under the following conditions to be cumulatively fulfilled:

- the ESIF-financed guarantee is provided to an underlying (modified existing or new) loan, as a necessary temporary measure to provide an effective response to a public health crisis,
- the guarantee contract allowing for refinancing has to be signed starting with 1 February 2020. The date of signature of such guarantee contract is the starting date for the calculation of the eligibility of expenditure for guarantee contracts in line with Article 42(1)(b) CPR and Article 8 CDR;
- the FIs are set up under the TF or *de minimis* Regulation (please note that you can have one FI set up based on the two frameworks in parallel). Undertakings in difficulty defined as eligible by the Temporary Framework are eligible for ERDF support, but for schemes under *de minimis*, the exclusion of insolvent undertakings continues to apply (Article 4(3)(a) and (6)(a) *de minimis* Regulation), or under the EAFRD Regulation as further extended by the possibilities laid down in the amended CPR;
- the initial loan was not supported by EU as it would constitute double financing.

[1] Article 37(5) CPR provides that investments that are to be supported through financial instruments should not be physically completed or fully implemented at the date of the investment decision.

RO	We understand eligibility of expenditure would be exceptionally allowed for completed or fully implemented operations. Could you please kindly confirm if this applies also to financial instruments, by reference to Article 37(5) of the CPR? If yes, we would also like to better understand what would be the interaction between temporarily allowing support for completed or fully implemented operations with refinancing of existing loans?

The *de minimis* Commission Regulations are not affected by the CRII or the CRII+ or by the Temporary Framework on State aid in the context of the COVID-19 outbreak, as amended. They continue to apply in their entirety. Hence, the exclusion of insolvent undertakings, provided for in Article 4(6) of the *de minimis* Regulation continues to apply to ESIF-funded financial instruments (FIs), such as guarantee instruments, including the SME Initiative guarantee option, implemented under the *de minimis* rules.

However, the amendment to Article 3(3) of the ERDF Regulation introduced with CRII+ results in Member States being able to finance, through ERDF-funded financial instruments (including the SME Initiative), also undertakings in difficulty, including under the *de minimis* rules, provided that Article 4(6) is complied with.

Therefore, the solution lays in opening the SME Initiative up to other legal bases of State aid clearance, meaning other than *de minimis.* For example, the SME Initiative could be implemented under the Temporary Framework, which treats undertakings in difficulty due to COVID-19 outbreak as eligible to receive temporary aid, provided they were not already in difficulty on 31 December 2019[1].

In accordance with Article 108(3)(c) TFEU State aid measures to be implemented under the Temporary Framework have to be notified by Member States. Note should be made that the Commission will ensure fast assessment and adoption of compatible aid measures under the Temporary framework.

[1] The first amendment of the Temporary Framework, adopted on 3/04/2020, simplified the reference to undertakings in difficulties initially inserted in the TF, for the sake of clarity.

RO	We understand that undertakings receiving support complying with the State aid Temporary Framework or *de minimis* Regulations [1407/2013, 1408/2013 and 717/2014] would not be regarded as undertakings in difficulty for the purposes of this eligibility point. However to receive aid complying with the existing *de minimis* rules, a beneficiary cannot be subject to collective insolvency proceedings, or fulfilling the criteria under its domestic law for being placed in collective insolvency proceedings (Articles 4(3)(a) and 4(6)(b)). As such, may we kindly ask you to clarify if in order to ensure consistency between the Temporary Framework in the current COVID-19 outbreak and the *de minimis* Regulation, ERDF support under *de minimis* may be also without the limitation of Articles 4(3)(a) and 4(6)(b) mentioned above?

First loss portfolio guarantees could be implemented as a financial instrument operation under the CPR rules. As such schemes provide for differentiated treatment of investors, they would have to be in line with, among others, Article 43a CPR.

Differentiated treatment of private investors (or public investors operating under the market economy principle) should be also in line with State aid rules. In particular, when granted under section 3.2 of the amended Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, the duration of such guarantee should be limited, as a general rule, to 6 years and the public guarantee should not exceed 35% of the loan principal.

Such schemes can be also implemented under Article 39 CPR (SME Initiative) or Article 39a (combination ESIF - EIB products under EFSI) CPR. Such option is possible also for Member States that have not made use of these provisions previously.

As regards the need and scope for an ex ante assessment in line with Article 37(2) – see reply *Ex ante assessment and need for programme amendments when working capital is added* (section 3 and 4). In its second proposal under the CRII, the Commission has proposed to amend Article 37(2)(g) CPR so no review or update of the ex-ante assessments would be required, where changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak. In any event, such review/updates should not delay deployment on the ground if the approach for preparation of a very focused document, in line with the reply referred in the beginning of this paragraph, is followed.

EL	Possibility to finance from ERDF: Scheme for first loss portfolio guarantee on working capital of SMEs

Existing financial instruments could be updated to extend their scope and to include previously excluded support for working capital purposes or interest rate subsidies. This could be achieved through introduction of new products (e.g. a grant (interest rate subsidy) combined with a loan in a single financial instrument operation), or by modification/extension of the existing products to cover such new form/scope of support.

The legislative framework for the implementation of ESIF-financed programmes remains fully applicable, however, even under the current exceptional circumstances. Therefore, the national authorities, when adjusting the ongoing operations, always have to ensure compliance with existing rules, including, among others, with public procurement.

In line with amended Article 37(2)(g) CPR no review or update of the ex-ante assessments is required if the amendment of an existing FI takes place in the context of taking measures to respond to the current public health crisis.

EL	Possibility to finance from ERDF: Scheme for subsidised interest rate on working capital loans to SMEs: up to EUR 1 billion, ERDF, to be included in existing FI
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 FI?

The first paragraph of Article 25a(11) CPR introduced by Regulation (EU) 2020/558 combines in one provision a derogation from two requirements: (1) for “*new or updated business plans or equivalent documents*” and (2) for “*evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as part of the supporting documents*”. Therefore, it concerns both types of business plans referred to in applicable legislative framework:

- business plans or equivalent documents referred to in point 1(b) and 2(b) of Annex IV to the CPR, which form part of the funding agreement; and

- supporting documents submitted by the final recipients (enterprises), namely business plans referred to in Article 9(1)(e)(vii) of Commission Delegated Regulation 480/2014, and evidence that the support provided through the financial instrument was used for its intended purpose referred to in Article 9(1)(e)(xi) of the said regulation.

EE	Article 25a (point 11) of CPR: whose business plans, equivalent documents and evidence does this concern – of the financial instrument (as defined in the funding agreement) or of the final beneficiary (enterprise)?

The second subparagraph of the amended Article 37(4) CPR provides 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*". The amended provision provides additional flexibility to the scope defined in the second sentence of the first sub-paragraph.

The new sub-paragraph of the amendment is not a requirement in addition to those referred to in the first sentence of the first sub-paragraph of Article 37(4) CPR, which clearly sets out the targeted activities for which ESI Funds may provide financing to enterprises. Indeed, as clarified in the second and third sentences of the first sub-paragraph of Article 37(4) CPR, the ESI Funds may be used for any of such targeted activities, e.g. strengthening the general activities of the enterprise, including *through* investments in tangible/intangible assets, transfer of proprietary rights and working capital support. The second sentence of the first sub-paragraph of Article 37(4) CPR further clarifies that when the support is provided through working capital then such support must be in line with the limits of applicable State aid rules and with a view to stimulating financing from the private sector too. The amended new sub-paragraph does not extend the scope of support beyond what has already been covered under the first sub-paragraph, but makes justification of support for working capital to SMEs easier in the context of the public health crisis, especially in the context of short-term working capital support (see reply on 'Time limits on working capital transactions').

The Commission does not find it necessary to amend the guidelines on working capital (EGESIF_14_0041-1) as they seem to already provide very flexible framework, and accompanied by the additional explanation in this and other replies could be used effectively to design crisis-related measures.

EE	Under Article 37(4) CPR, ESIF programmes' support to enterprises delivered through FIs has to target at least one of the following: establishment of new enterprises, early-stage capital (i.e. seed capital and start-up capital), expansion capital, capital for the strengthening of the general activities of an enterprise, realisation of new projects, penetration of new markets or new developments by existing enterprises. Does this requirement not apply in the case of working capital (in line with the amendment in the first CRII package in Article 37(4)? Will the Commission also amend its relevant guidance?

The derogation in the first paragraph of Article 25a(11) CPR will simplify verifications needed before a request for a subsequent tranche of advance is made for a financial instrument, by not requiring any "*new or updated business plans or equivalent documents and evidence allowing verification that the support provided through the financial instruments was used for its intended purpose as **part of** the supporting documents*". However:

- the simplified approach would apply only in relation to support in the form of working capital to SMEs pursuant to the second subparagraph of the amended Article 37(4) CPR (inserted by the CRII Regulation), i.e. when necessary as a temporary measure to provide an effective response to a public health crisis;
- the other requirements under the CPR (e.g. Article 40(1) on the verifications to be carried out and Article 42 on the eligibility of expenditure) and under Commission Delegated Regulation (EU) No 480/2014 (CDR) remain in force; in particular, other supporting documents proving that the final recipient is an eligible SME and that the financial flow of the support indeed reached the final recipient (e.g. the loan was actually disbursed) need to be checked (see Article 9 CDR).

The CRII and CRII Plus Regulations do not introduce any modification in Article 41 CPR related to the payments by the Commission to the Member State which have to continue to be done in tranches as stipulated in this Article. Nevertheless, as some control obligations are simplified, this may facilitate the achievement of the requested thresholds.

We recall that Article 41 CPR applies only to the relation between the Commission and the Member State and not between the managing authority and the fund manager. The Commission recommends that the managing authority in its contractual relation with the body implementing the financial instrument in question also applies a correspondingly phased payment schedule, but other payment schedules can be contractually established (at national/regional level). For liquidity purposes, the Member State may also use the amounts not recovered in line with the amended Article 139(7) CPR (introduced by the CRII Regulation) to provide the support to such financial instrument operations before the subsequent tranches are requested and in this way address the unlikely shortfall.

Please note that you can only start counting expenditure towards the threshold for the subsequent tranches of advance established in Article 41(1)(c) CPR **from the moment the support is *indeed* provided at the final recipient level** (e.g. the loan is actually disbursed), without any need to provide specific proof of the use of the support by the SME (which might not be needed or which might happen later). This rule applies generally, i.e. outside the context of COVID-related support under the new second sub-paragraph of Article 37(4) CPR as well.

FR	La CRII+ permet l'exonération de pièces justificatives permettant de s'assurer de l'utilisation du soutien par le biais d'IF au sein d'une entreprise. Or, pour le soutien via un instrument financier, l'autorité de gestion doit verser ses financements par tranche de 25%, sur la base des dépenses réelles et sur présentation des justificatifs de paiement auprès des entreprises. **Vu l'absence d'obligation de justificatifs auprès des entreprises, est-il possible d'envisager non plus un versement par tranche de 25%, mais en une fois ou selon le calendrier de financement fixé par l'autorité de gestion ?** Cette modification serait essentielle pour promouvoir la pleine efficacité des instruments financiers et d'éviter que l'épidémie de COVID 19 ne se transforme en crise économique à long terme. CRII + allows for the exemption of supporting documents to ensure the use of support through FI within an enterprise. However, for support via a financial instrument, the managing authority must make its payments through instalments of 25%, on the basis of actual expenditure and on presentation of supporting documents of payment to companies. **Given the absence of an obligation for enterprises to provide evidence, is it possible to consider that the payment trough instalments of 25% can be replaced by a single payment or by payments made according to a calendar set by the MA?** This possibility would greatly improve the use of CRII + funds and allow for an immediate and full response to the liquidity needs of the beneficiary companies.

The derogation from the requirement of Article 37(2)(g) CPR to review or update ex-ante assessment for financial instruments in Article 25a(10) applies when "*changes in financial instruments are necessary to provide an effective response to the COVID-19 outbreak*". No time limits are set in this provision and as long as this is in line with the other applicable rules, including State aid, support for restoring or strengthening business growth during the longer period where the effects of crisis persist, is clearly eligible and covered by this provision. This derogation applies to all ESIF financial instruments implemented in accordance with Article 37(2) CPR.

The derogation from the requirements to prepare a new or updated business plans or equivalent documents and to ensure evidence allowing verification that the support provided through the financial instruments was used for its intended purpose applies only in relation to the new second sub-paragraph of Article 37(4) CPR i.e. **only when the financial support is provided** "***in the form of working capital to SME****s pursuant to the second subparagraph of Article 37(4) CPR*" (inserted by the CRII Regulation), i.e**. where necessary as a temporary measure to provide an effective response to a public health crisis**. What is considered 'temporary' should be defined in national rules providing that such measure contributes to making the response effective. It is not excluded that working capital support would enable SMEs to address their post-crisis needs, but if financing is not provided for working capital needs in the context of the COVID-19 crisis (under the new second sub-paragraph of 37(4)), then the proposed derogation provided by Article 25a(10) CPR would not apply.

Even if the derogation provided by Article 25a(10) CPR does not apply, it is still possible that no updated ex-ante assessment might be needed for the financial instruments which already provided working capital support before the crisis. However, this needs to be assessed case by case in line with the principles outlined in reply on "Ex ante assessment and need for programme amendments when working capital is added". As regards business plans, if a financial instrument supports financing to enterprises for business growth in the longer term (i.e. for expansion capital or capital for the strengthening of the general activities of an enterprise, or any other targeted activity under the first sentence of the first sub-paragraph of Article 37(4) CPR), then a new/updated business plan would be required. See reply on "SMEs: investment costs and operating costs after implementation phase" for more details.

Please note that you can also provide financing which combines support for the crisis-linked working capital with support for investments or for other types of working capital (e.g. strengthening of the general activities of an enterprise) beyond the impact of the crisis. Such support for investments **could already be eligible under first paragraph of Article 37(4) CPR and Article 3 ERDF Regulation**, e.g. as productive investments in SMEs (Article 3(1)(a) ERDF Regulation) or investments in business infrastructure (Article 3(1)(d) ERDF Regulation) and may already be covered by existing ex ante assessments and business plans.

UK	There is an exemption now in place for the requirement to review and update ex-ante assessments and business plans, where financial instruments are adjusted to effectively address the public health crisis. The proposed regulation suggests that this exemption could only be used where immediate support in the form of short term working capital is being provided in response to the crisis. The EC announcement on 2 April implies the possibility of further relaxation. **Clarity would be welcomed on whether this could also apply to slightly longer term plans for a fund to support business growth, post crisis, but for SME's directly affected by COVID 19.**

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.

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.?

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 refer to Commission's communication '*Coordinated economic response to the COVID-19 Outbreak*' 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 refer to Commission's communication '*Coordinated economic response to the COVID-19 Outbreak*' 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 *ex ante* 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.)
LT	Concerning COM proposal to use financial instruments to finance working capital in SME's - will it be possible to derogate from requirements to do ex ante assessments on market gap analysis? Giving the extraordinary situation there would be only a time-consuming procedure with no value in it.
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	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?
HU	When launching a new working capital loan scheme under EDIOP Priority 8, should the scheme be supported by an ex-ante analysis or would it be sufficient for the Commission if we refer to the amendment of the CPR? Article 37(2) of the CPR sets out generally the requirement of an ex-ante analysis, before launching a new scheme. We have not found any exculpatory provision, that this measure should not been applied under the present circumstances. However, on the basis, and the reasons for amending CPR, and taking also into account, that this epidemic poses a significant risk to public health, we think it would not be realistic, if the Comission still maintains (expects) the general provision for ex-ante analysis. Preaparing such an analysis could cause a delay of weeks, or months to the implementation, to the launching of the working capital loan. (For the reply see section 3 and 4)

IT	Given that the conditions for the failure of the market are self-demonstrated by the fact that the scope of the support is to cope with the health emergency, is it possible to foresee derogation to the obligation to carry out the ex-ante evaluation for financial instruments to be activated or modified for the implementation of measures related to the public health crisis? Does the Commission envisage to introduce simplified expenditure verification procedures in the use of financial instrument in this field? (For the reply: see section 3 and 4)
DE	Funding is allowed, if the programme already permits the financing of working capital. If not, the programme has to be amended. Is it correct, that managing authorities do not have to wait for the approval of the programme amendment in order to implement the funding of working capital? (For the reply see section 1)

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 of 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	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: -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.

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.
LV	Clarity is needed on the possibility under force majeure to declare as eligible ESIF projects completion expenses incurred beyond the end of 2023, particularly for projects where implementation is spanning over several years. We urge the Commission to ensure such exemptions.

Article 87 (1) (b) CPR provides for the exception to decommitment: 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 reduced from the amount concerned by decommitment. Direct impact of force majeure to programme implementation must 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.

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?

There are two possibilities for reallocation between already existing thematic objectives (TO) under a programme:

- In the case of a programme where each priority corresponds to one TO, a reallocation between TOs implies a reallocation between priorities. e. such reallocation requires a programme amendment in accordance with Article 30(1) and (2) CPR but it does not require an immediate amendment.
- For priority axes, which combine investment priorities from different thematic objectives, the 2nd sub-paragraph of Article 96(2)(d)(ii) CPR requires that the amount of the total financial appropriation from each of the Funds and the national co-financing for each of the corresponding thematic objectives has to be specified in the programme. I.e. such changes would also require a programme amendment in accordance with Article 30(1) and (2) CPR. These can be also carried out at a later stage.

However, the new Article 30(5) CPR allows for a limited transfer between priorities, for which only a notification of the revised financial tables to the Commission via SFC is sufficient. In that respect, the corresponding reallocations between TOs, as a consequence of such amendments, can be done within the above mentioned notification and does not require approval by Commission decision.

HU	In accordance with the general rules, reallocation within or between the thematic objectives can be handled with the amendment of the operational programme, following by the approval of the Commission. In order to facilitate reallocation the amendment of the CPR makes it possible, that the Member State may autonomously transfer during the programming period an amount of up to 8% of the allocation of a priority and no more than 4% of the programme budget to another priority of the same Fund of the same programme, and shall not require a decision of the Commission amending the programme. In the case of EDIOP, we have a unique solution at EU level, for handling all financial instruments within one priority. Within this priority we have 5 thematic objectives. The amendment of the CPR explicitly has not provided specific measures for this situation. For that reason, we ask the Commission, whether it would be possible for the member state to reallocate the resources among the thematic objectives, within one priority on its own initiative. Should reallocation among the TO-s be possible on own initiative, we would like to ask whether this facility is limited by an overall ceiling, or this provision of the CPR remains unchanged. That means, that the reallocation will be applicable only after Commission approval, and under the planned amendment of the OP.
BG	In case of allocation between two thematic objectives is the modification of the programme necessary as well as the approval by the Commission?

It is possible to finance technical assistance only from the Cohesion Fund (CF), as in line with Article 59(1a) CPR "*Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds*", as long as the amount does not exceed 10% of the total allocation for CF in line with Article 119(2) CPR.

The amendment would consist of 2 parallel amendments:

- CF amounts from non-TA priority or priorities would have to be transferred to the TA priority axis (priority 14 financed from CF);
- Corresponding ERDF amounts would be transferred from the TA priority axis (priority axis 13 financed from ERDF) to other ERDF priorities.

The transfers would have to respect the limits included in Article 30(5) CPR to be considered not substantial and not require any decision of the Commission. In particular, the transfer of ERDF amounts from the TA priority axis could not exceed 8% of the total allocation for the priority as of 1 February 2020, i.e. ca. EUR 5.5 million only. Hence, the intended purpose "*to finance technical assistance only from the Cohesion Fund*" would not have been achieved, as at least 92% of the amount from ERDF which was allocated to technical assistance would still have to be used for this purpose.

The intended shift could be done more effectively through a normal programme amendment procedure. There is no need to urgently submit a request to the Commission for amending the programme as, irrespectively of the date of submission of the amendment, the following applies:

- expenditure for operations for fostering crisis response capacities will be eligible as of 1 February 2020 (in line with proposed Article 65(10) CPR);
- on the technical assistance side, the TA priority axis financed from CF already has the same scope as the TA priority axis financed from ERDF. Hence, there is no new scope of expenditure that would become eligible only as a result of such an amendment and provisions of Article 65(9) CPR have no effect, with eligibility as before from 1 January 2014.

The amounts already certified in the accounts submitted to the Commission for the TA priority axis financed from ERDF can no longer be transferred. Therefore, only the TA amounts not yet included in the accounts should be in full declared under the TA priority axis financed from CF. This could continue to be done even if the allocation for the priority axis is exhausted. Programme amendment requests could be submitted later.

The proposed justification for both interlinked transfers (including that one of them "*is needed to make [the crisis measures] possible*" would be sufficient both in the context of the normal amendment procedure (justification under Article 30(1) CPR) and in the context of Article 30(5) CPR, which does not require such a direct link to the crisis.

EE	At the moment, Estonian technical assistance for the one and only Estonian multi-fund operational programme 2014EE16M3OP001 is financed from the ERDF as well as the Cohesion Fund at predetermined proportions. Would it be

	feasible to finance technical assistance only from the Cohesion Fund, moving more of the Cohesion Fund from other measures to technical assistance and redirect the ERDF funding released from technical assistance towards crisis measures? Would this be possible without a Commission decision, given that it includes two modifications of which one is directly towards crisis measures (and the other is needed to make this possible)?

In view of the socioeconomic impacts of the COVID-19 outbreak, the European Commission made a series of proposals on 13 March 2020, within the Coronavirus Response Investment Initiative, to respond to the Member States' needs. The proposal to amend the CPR and the ERDF Regulation[1] was adopted by the co-legislators on 31 March 2020[2] and entails the following main changes affecting re-programming:

- A simplified procedure is introduced not requiring a Commission decision to transfer limited resources of the same Fund and same category of regions inside a programme (Article 30(5) CPR). (As regards re-programming requiring a decision, the Commission will work closely with the relevant authorities to accelerate the corresponding procedures.)

- Expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020 (Article 65(10) CPR).

- The European Regional Development Fund (ERDF) can newly cover working capital in small and medium-sized enterprises and investments in products and services necessary for fostering the crisis response capacities in public health services under the thematic objective to strengthen research, technological development and innovation[3].

On 2 April 2020, the Commission proposed a new set of measures to further amend the CPR and the ERDF Regulation (COM(2020) 138) – which are part of the Coronavirus Response Investment Initiative Plus (CRII+). The new package complements an earlier initiative by introducing extraordinary flexibility to allow that all non-utilised support from ESI Funds can be mobilised to the fullest. This flexibility is provided, among others, through:

- transfer possibilities across the three cohesion policy funds (the European Regional Development Fund, the European Social Fund and the Cohesion Fund) but limited to the 2020 allocation (new Article 25a(2) CPR);

- transfers between the different categories of regions (new Article 25a(3) CPR);

- flexibility when it comes to thematic concentration for the 2020 allocation (new Article 25a(5) CPR);

- possibility to select physically completed or fully implemented operations fostering crisis response capacities before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary (new Article 25a(7) first subparagraph CPR);

- possibility to select operations fostering crisis response capacities, even prior to the approval of the necessary programme amendments (new Article 25a(7) second subparagraph CPR. Given the above amendment - new Article 25a(7) first subparagraph CPR - these operations can even be completed when they are selected;

- a 100% EU co-financing rate for cohesion policy programmes for the accounting year 2020-2021 (new Article 25a(1) CPR).

Furthermore the Commisison has proposed that Partenrship Agreements are no longer to be amended and that programme amendments do not entail the amendment of Partnership Agreements.

Practical impact on the re-programming process

<u>Derogations based on Article 30(5) and 65(10) CPR and new possibilities for investment under ERDF</u>

Given the necessity to mobilise resources of the ESI Funds towards providing a quick and effective response to the public health crisis related to the COVID-19 outbreak, the CPR includes a new paragraph 5 in **Article 30.** According to this provision the Member State **may transfer** during the programming period an amount of up to 8% of the EU allocation (and the corresponding national co-financing) as of 1 February 2020 of a priority and no more than 4% of the total EU programme allocation (and the corresponding national co-financing) to another priority of the same Fund and category of regions of the same programme. Such transfers shifting Union and national resources across the priorities in the programme **do not require Commission approval**. It is sufficient to notify changes in the relevant financial tables of section 3 of the programme template to the Commission via SFC (i.e. tables 18a, 18c and 19). However, the relevant programme amendment has to be approved by the monitoring committee in advance. Moreover, these transfers cannot affect previous years and must comply with all regulatory requirements (*Note: According to COM(2020)138 - CRII+, the COVID-19 related amendments are proposed not to be subject to the requirements on thematic concentration for the 2020 allocation*).

In addition, there is a new **Article 65(10) CPR** allowing for a derogation from Article 65(9) CPR, whereby all expenditure for **operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020**.

This applies also to the activities covered by the amendment to the ERDF Regulation – the support for the investments necessary for strengthening the crisis response capacities in health services in Art. 5 of the ERDF Regulation and the financing of working capital for SMEs under Art. 3 of the ERDF Regulation (for the latter this is only relevant where the provision of such financing is not yet possible based on the existing programme).

In practice, Member States may identify already now the operations that fall within the scope of "fostering crisis response capacities in the context of the COVID-19 outbreak" and the related expenditure incurred and paid as of 1 February 2020 and later on. *(Note: COM(2020)138 - CRII+ proposes to derogate from Article 125(3)(b) CPR, allowing to select* ***operations*** *fostering crisis response capacities in the context of the COVID-19 outbreak* ***for support by the ERDF or the ESF prior to the approval of the amended programme****.*

In addition, COM(2020)138 - CRII+ proposes to introduce a derogation for such operations from Article 65(6) CPR, to allow the managing authority to select the operations for support by the ESI Funds where they have been physically completed or fully implemented before the application for funding under the programme is submitted by the beneficiary to the managing authority, irrespective of whether all related payments have been made by the beneficiary.)

Process for programme amendments

When operations that fall within the scope of "fostering crisis response capacities in the context of the COVID-19 outbreak" are not covered by the scope of the operational programme(s) currently in force (e.g. types of actions, target groups, types of beneficiaries), the Member State has to take the following steps before including the corresponding expenditure in interim payment applications for the reimbursement by the Commission:

1) Keep track of these operations that could fall within the scope of "fostering crisis response capacities in the context of the COVID-19 outbreak" and ensure they comply with applicable law. It may not be possible to include expenditure linked to these operations in interim payment applications at this stage, because the content of the applicable programmes may not yet correspond to these operations (e.g. as regards types of actions, target groups, types of beneficiaries or guiding principles for selection of operations). Nevertheless it is important that MS ensure that these operations comply with applicable law relevant for the operation, in accordance with Article 125(3)(e) CPR (see also point 3) below).

2) The MS has to identify the impact of the "operations fostering crisis response capacities in the context of the COVID-19 outbreak" on the relevant programmes to prepare the necessary amendments. These amendments can fall into one of the three categories:

1. a) amendments that concern elements of the programmes that have to be approved by a Commission decision – in this case the Member State should submit a request for programme amendment as required by Article 30(1) CPR, for example to include/modify relevant indicators, new thematic objectives, types of actions, main target groups, types of beneficiaries or guiding principles for the selection of operations etc. and the corresponding text of the programme. When processing these requests, the Commission will take into account their urgent character;
2. b) transfers that fall under the flexibility provided under Article 30(5) CPR, i.e. the revised relevant financial tables (tables 18a, 18c and 19) under section 3 of the programme that must be notified to the Commission;
3. c) amendments that concern other elements of the programme that are only notified to the Commission and thus remain under the responsibility of the Member State (e.g. changes to the categories of intervention[4]).

It would be possible that a MS made first the reallocation of Union and national resources between the priority axes within the limits allowed under Article 30(5) CPR. It could spend money where needed for beneficiaries and actions eligible under the current OP version. Then MS has to follow with an amendment to the operational programme under Article 30(1) CPR to include/amend the relevant elements linked to the "operations fostering crisis response capacities in the context of the COVID-19 outbreak". (*Note: As mentioned above, COM(2020)138-CRII+ proposes a derogation from Art.125(3)(b) CPR and allows MS to select operations fostering crisis response capacities in the context of the COVID-19 outbreak prior to the approval of the amended programme. It should be noted that such operations could be selected but not reimbursed by the Commission until adoption of the amendment to the operational programme.)*

The newly amended CPR and the proposals under the CRII+ package do not introduce any changes to the procedural requirements for programme amendments under the CPR for the three categories of amendments set out above. The obligations for both the Commission and the MS remain the same. In this respect, all the above amendments will require an approval by the monitoring committee, pursuant to Article 110(2)(e) CPR, and a submission via SFC. Taking into account the current situation, the monitoring committee could approve proposed amendments by written procedure, which is normally a possibility provided for in the rules of procedure of the monitoring committee.

In addition, MS should as well introduce any necessary adjustments to the national rules, e.g. on eligibility.

The Commission is committed to work together with all the affected Member States and regions to amend, where necessary, the existing programmes in a swift manner. As an example, the Commission is able to process faster amendment requests that were pre-discussed and pre-agreed with the MS informally, before the submission of the request via SFC. Therefore, a constructive dialogue and cooperation between the Commission services and the MS before the submission of a request for a programme amendment is of utmost importance.

Also, the Commission organised itself internally in order to shorten as much as possible the time for adoption of its decisions.

3) Once the relevant programme amendments are in force (either following approval by the Commission in category (a), or by the monitoring committee in category (b) and (c)), the certifying authority may then include the relevant expenditure in interim payment application and submit it to the Commission for reimbursement.

[1] COM(2020)113.

[2] Regulation (EU) 2020/460

[3] Investment priority under Article 5(1)(a) of Regulation (EU) No 1301/2013.

[4] It is recalled that for the ESF the codes for the intervention field dimension (Nos 102 to 120) correspond to the investment priorities (see Table 1 of Annex I of Commission Implementing Regulation (EU) No 215/2014) and any change to the investment priorities requires approval by Commission decision.

BG	When we allocate funds from one investment priority (IP) and priority axis (PA) to another is it necessary to follow all the rules set for this IP/PA incl. target groups/beneficiary/costs?
PL	In case MS would like to transfer money between Funds, go beyond the financial limits set out in the CPR modification (more than 8% of the priority axis or more than 4% of the OP allocation) or OP text misses some important elements necessary for the implementation of the health measures (such as type of beneficiary or mode of implementation, would COM decision be needed and if so, is there any fast track procedure foreseen in such cases? Would the start date of eligibility in such cases be date of submission in SFC or 1 February 2020?
DE	Does this provision [Art. 30(5)] require in any case a programme amendment to address the new possibilities of the CRII? Is it also an option to continue the existing programmes as planned if these measures can also be linked to the reaction on the COVID-10 outbreak in a broader sense? A flexible approach that respects the regional needs is crucial for a successful implementation of the CRII.
DE	Is it possible to start with the new funding opportunities before COM has approved an amendment to the programme?
NL	Can the CRII resources also be added to national Covid support measures, without having to programme them under the ESI funds and ESI funds rules (CPR)? e.g. STW arrangements which do not fall under the ESI-programming.
NL	What are the consequences of programming CRII resources under the existing ESI-programmes and spending the money (from Feb 2020), without having legal certainty of the programme amendment being adopted by the COM?
FR	Sur la rétroactivité : s'il est possible de mettre en route les actions avant même l'approbation des modifications, il conviendrait cependant que ladite approbation intervienne rapidement afin de sécuriser les décisions des autorités de gestion. Aussi, la Commission pourrait-elle indiquer sous quel délai elle sera en mesure d'approuver les modifications de programmes opérationnels ?
FR	Sur la rétroactivité également : pourriez-vous confirmer que matériel acheté par les hôpitaux depuis le 1er février comme des respirateurs ainsi que les équipements et travaux réalisés en vue de lutter contre le COVID sont bien éligibles à la CRII?
IT	In order to accommodate health expenditure within TO1 and benefit of the retroactivity of expenditures since 1.2.2020, it is important that expenditures (part already occurred) can be declared without a prior OP modification. Furthermore, hospitals and other related public healthcare centres must be able to become beneficiaries (currently under TO3 enterprises are beneficiaries). The Italians ask for a wide interpretation of the OP provisions in this respect.
SE	Will there be more flexibility when it comes to programme changes due to new focus areas/investment priorities that are

	chosen to respond to the consequences of the Corona crisis?
UK	Is there anything more you can tell us about how you anticipate this working? We could identify funding to be diverted to fighting the impacts of Corona virus quite quickly, but we will need to know urgently what approvals we will need from you, how to get them, how long it will take and what you will accept as reductions to the current agreed programme outputs and expenditure as a result.
EE	Is it possible to implement measures related to the corona virus outbreak without a Commission decision amending the operational programme in substance?
PL	How the process of amending programmes, will be organized, have any fast paths been planned?
SI	What is the relation towards OP modification – we understand that we as managing authority could approve COVID-19 operation on the basis of your letter and incorporate the content in a subsequent OP modification (approved only by monitoring committee)?
BG	How the force majeure conditions could be used in order to speed up the whole process of structuring a measure supporting the corona crisis overcoming?
CZ	How will the simplified transfer procedure look like? Can we expect that not only the financial transfers under the CRII per se would be greenlighted, but also other changes related to this revision (e.g. related change of indicators) will be considered as approved?
DE	The existing programmes are encouraged by COM to commit funding in next weeks and deal with paperwork later. Is there a need for new indicators or indicator changes in order to finance new actions responding to the crisis? Or can indicator changes be rather dealt with later on? Is additional reporting necessary? Do the existing mechanisms and procedures for the financial and administrative implementation of the programs remain unchanged?
DE	Please confirm, that the proposed amendment in Art. 30 (5) new includes the possibility to adapt targets and indicators of the measures concerned, proportionally to amount transferred (e.g.: Reducing by 5% the volume of a specific measure, this may lead to a 5% reduced target for 2023, while the targets respectively have to be more ambitious for the measure which receives an additional budget).
FI	Are there some proposed modifications concerning the administrative process [or programme amendments] e.g approval by MC?
FI	The necessity of changing the intervention fields?
FI	What about the timeline?
SK	Is it sufficient if changes to the OP are approved by the Monitoring Committee using the per rollam procedure (in order to accelerate the process)?
IT	Is it possible to confirm that, being expenditure related to the public health emergency eligible from 1st February 2020, the amendment to the Partnership Agreement (and relevant programmes), if needed, can take place at a later stage?
IT	More generally, the inclusion of investment priorities or specific objectives related to expenditure for the COVID-19 outbreak in the Regional Operational Programmes (e.g. in TO1 but also in TO3, TO8, TO9) could be considered as non-substantial changes and, therefore, not require a decision by the Commission approving the Programme amendment, in accordance with the simplified procedure set out in the proposal for a regulation on the Coronavirus Response Investment Initiative (art. 2)?
EE	Is it possible to start the implementation of actions linked to the outbreak of the corona virus immediately, but to modify the operational programme (even at the Monitoring Committee level) towards the end of 2020? Namely we need to be prepared for changes in the economic and labour market circumstances as well as possible changes in the demand for support in different measures. Given that 100% of EU funding has been planned, and much of it in economic and labour market measures, it is at the moment difficult to determine which could be the “donor” priorities and to which extent. This should be clearer in some months. Nevertheless crisis intervention might be needed sooner.

The MS can choose if it wants to submit a separate request for programme amendments for CRII measures only. A joint programme amendment is also possible covering both CRII measures and previously planned changes. In both cases, in accordance with Article

110(2)(e) CPR the monitoring committee has to approve the proposal for any amendment to the operational programme. (For amendments of rural development programmes, the monitoring committees shall be consulted in accordance with Article 49(3) CPR.) As regards the EMFF, Article 49 CPR and Article 113 of R. 508/2014 apply.

Whilst in accordance with Article 65(10) CPR expenditure for operations for fostering crisis response capacities in the context of the COVID-19 outbreak is eligible as of 1 February 2020, please note that the eligibility of expenditure not stemming from operations for fostering crisis response capacities in the context of the COVID-19 outbreak is subject to Article 65 (9) CPR (i.e. expenditure that becomes eligible as a result of the programme amendment is eligible from the date of submission of the OP amendment request to the Commission). In addition, if separate amendment requests are submitted, they should not overlap in SFC, i.e. the second one should be introduced in SFC only after the first one is approved (or withdrawn).

DE	Should there be an OP amendment process for CRII measures specifically? How should this been distinguished with already planned OP amendment processes to shift budget between priorities before end 2020?

In order to reply to this question, it is necessary to examine the link between the planned new types of projects and the underlying ITI strategy as well as the current content of the relevant programme.

As regards the link between new projects and the ITI strategy, it should be noted that in accordance with Article 36 CPR, an ITI is based on an urban development strategy or other territorial strategy, or a territorial pact referred to in Article 12(1) ESF Regulation. Therefore, the new types of projects have to fall within the scope of that strategy. If this is not the case, the strategy would have to be revised accordingly.

As regards the link between the programme content and the planned new types of projects, please see the replies dedicated specifically to the topic of programme amendment.

BE	If the new measures are included in the same priority axis (SMEs), fit into the original scope and ITI strategy, and would only mean a different focus of the call for projects, could you please confirm that an amendment of the OP is not needed? What would be then the procedure for the MA to have this change registered/approved?

In its proposal for the Coronavirus Response Investment Initiative Plus (COM(2020)138), presented on 2 April 2020, the Commission proposed that the Partnership Agreement would not be amended as of the date of entry into force of this proposal until the end of the 2014-2020 programming period (new Article 25a(6) CPR).

As regards the amendment of programmes, please see the replies dedicated specifically to this topic.

IT	Is it possible to confirm that, being expenditure related to the public health emergency eligible from 1st February 2020, the amendment to the Partnership Agreement (and relevant programmes), if needed, can take place at a later stage?
FI	What about the Partnership Agreement?

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?

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.

The reply to a number of questions listed separately earlier have been merged in this entry for consistency and to avoid repetitions. The questions to which separate replies were provided originally – but are equally covered by this reply – are set in bold/underline.

In line with Art. 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."*

Provided that the specific circumstance invoked by Member States qualifies as unforeseeable/unpredictable, they may make use the negotiated procedure without prior publication for public works contracts, public supply contracts and public service contracts.

Such circumstances depend on the specific cases at stake and require a case by case analysis. For example, the purchase of medicines or sanitary equipment relating to the Corona virus crisis could be considered as an unpredictable circumstance 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, which is the case of the Coronavirus crisis*, 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; where several successive modifications are made, that limitation shall apply to the value of each modification. Such consecutive modifications shall not be aimed at circumventing this Directive.*[1]

For more information, please, consult the "Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis" adopted by the Commission on 31 March (2020/C 108 I/01).[2]

Beyond this, the Commission's services are ready to provide help and assistance to the Member States' authorities.

[1] The part in italics (as set out under Art. 72(1)(c) of the public procurement Directive) is added as clarification to the original reply to BG question "*Is it possible to delay the execution of contracts under public procurement procedures and extend the deadlines for implementation? Will be there some recommendations?*"

[2] The replies to BG question "*Is it possible to apply public procurement rules more flexibly?*" , LT question "*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.*" and SI question "*Related to the force majeure situation how this affects the state – aid rules and public procurement rules which could be cumbersome in such circumstances?*" originally referred to the Communication (COM(2015) 454 final) which in the current context is replaced by the communication indicated in the text.

BG	Does standard public procurement apply or does the EC believe exceptions can be made in this case in order to deliver measures faster?
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?**
BG	**Is it possible to apply public procurement rules more flexibly?**
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	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: 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. In these cases, could the contracting authority rely on Article 72, points (c) and (d) from paragraph 1 of Directive 2014/24/EU?

A number of questions have been raised related to the need to modify current contracts (i.e. contracts already awarded and whose execution is ongoing) due to the present COVID-19 crisis. In fact, the consequences of the crisis on public contracts can be very important: the economic operator holder of the contract may face difficulties to carry out the works as agreed in the contract and provide the services or supplies subject of the contract. In certain cases, the economic operator may be unable to execute the contract (e.g. due to production stop or broken supply-chain or may face liquidity problems because of the lockdown).

This might provoke situations of general contractual defaults with the associated litigation and important economic and social consequences. The risk would concern both economic operators (who may declare bankruptcy) and contracting authorities (who will not receive the works, services and supplies that they need).

In this situation, modifications of the public contracts on the grounds of Article 72(1)c) of Directive 2014/24/EU (and equivalent provisions of the concession contracts and utilities directives) may be justified from the moment that the conditions established by this provision are respected. More precisely:

a) the need for the modifications result from circumstances which a diligent contracting authority could not foresee:

in the current circumstances, it is rather clear that the first condition would be met (the COVID-19 crisis being clearly a circumstance that could not be foreseen by contracting authorities);

b) the modifications do not change the overall nature of the contract:

it would mean that the modifications would not change substantively the dimension/volume and the nature of the works, services or supplies to be provided, (this should be assessed case-by-case). It is clear that changes relating to the payment conditions, the granting to the economic operators of exemptions from contractual and legal sanctions for defaults in the contracts execution and justified extensions of the contractual execution delays are likely to be considered as justified modifications on the grounds of Article 72(1)c);

c) any increase in price is not higher than 50% of the value of the original contract; where several successive modifications are made, that limitation applies to the value of each modification; such consecutive modifications shall not be aimed at circumventing the Directive;

it is worth clarifying that the absence of increase in price does not preclude the application of Article 72(1)c).

In the current circumstances, it should be presumed that modifications of public contracts on the grounds of Article 72(1) c) may be acceptable, however with the following limit: the modifications must be **justified to the extent that they are needed to mitigate** the consequences of the crisis in the execution of public contracts and only to that extent.

Please consult this guidance document: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG

Audit

The reply to a number of questions listed separately earlier have been merged in this entry for consistency and to avoid repetitions. The questions to which separate replies were provided originally – but are equally covered by this reply – are set in bold.

Article 125(5)(a) 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) 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-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)(b) CPR are done only for a risk-basis sample (the same line applies to verifications under Article 23 of the ETC regulation). 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-the-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.

Compliance with legal applicable rules is still a requirement. Therefore management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules. The Audit Authorities will need to take into account the amended CPR legal provisions including amended State aid rules during their audit work for the process of providing assurance on the legality and regularity of expenditure.

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, or based on professional judgement on a non statistical sample under duly justified cases, while respecting a minimum coverage of operations and expenditure. The Commission has recently introduced a CPR modification that clarifies, between others, and subject to adoption by the co-legislator, that the current Covid19 crisis may be considered as a duly justified case to apply non statistical sampling for the 2019-2020 accounting year.

As regards current audit work, the Italian audit authorities have received a letter through SFC2014 (reference Ares(2020)1641010 of 18/3/2020) from the audit directors of EMPL and REGIO, prior to this new Commission initiative. In this letter, 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.

A further strongly recommended manner to significantly reduce the proportion of audits of operations per operational programme whilst keeping the assurance level high is to group operational programmes into one sample, hence reducing significantly the audit work since the sample of operations to audit would cover an enlarged population.

Considering the current practice in Romania (procedures of the managing authority), on-the-spot checks are mandatory when at least 40% of the investment is completed and when approving the final payment claim for the project. However, the Commission services are fully aware that, under the current circumstances of the pandemic, on-the-spot verifications may be impacted by the rules set up by the national authorities for protecting public health. Therefore, it is the responsibility of the managing authority to decide on the opportunity for having procedures with a temporary character, adapted to the existing crisis, considering all elements above, the potential impact on beneficiaries and the risk involved by each project.

It should be noted that for the EAFRD different rules apply as laid down in Regulation 1306/2013.

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 it implications on audits**
RO	I would appreciate if I could consult you in the following aspects: In view of the COVOD-19 pandemic, at the managing authority level, on-the-spot verifications were suspended, and, of course, these will be completed after overcoming the difficult situation that everyone is going through. However, on-the-spot verifications for the final reimbursement claims remained in question. Given the extremely low error rate per program, as well as the need to support the economy, we would like to kindly ask you if you could please let us know your opinion concerning the authorization of the final reimbursement claims with the possibility to complete on-the-spot verifications after this difficult situation, following any irregularity and financially impact finding to be recovered from the beneficiary. For us to order all the necessary internal measures that are required in relation to this topic, we are looking forward to your reply.
BE	If new operations need to be decided, (launch of open calls for projects with wide dissemination, compliance with non-discriminatory and transparent selection criteria, establishment of an expert committee, etc.) how do the Audit Authority and all audit levels check these points?
DE	Are provisions of Article 125(5) CPR applicable for the management verifications under Article 23 of the ETC regulation (MA of the Interreg BB(DE)? What about the possibility to modify (simplify) control modalities in order to finalise the audits on time?

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. Therefore, management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules.

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 (the same line applies to verifications under Article 23 of the ETC regulation). 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. 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.

On the basis of the above managing authorities have sufficient flexibility, as they can proceed in the conditions stated above with declaration of expenditure and payments to beneficiaries, thus complying with their legal obligations under the CPR. Acting in the way proposed by the national authorities is neither necessary nor recommended. With regard to whether or not the cost of the guarantee can be considered as eligible expenditure, this aspect needs to be verified by the national authorities under the relevant national eligibility rules.

IT	Following the Covid-19, several beneficiaries (SMEs) stopped their productive activities and consequently expenditure incurred on the ground already declared by the beneficiaries to Managing authorities cannot be audited (first level Control on-the-spot checks).In order to restore liquidity and to avoid additional negative financial consequences from the crisis, it

	would be very useful to reimburse the expenditure already incurred on the ground and declared by the beneficiaries to Managing Authority. Once the Managing Authority has carried out the checks, recovery order could be issued, in case of amount unduly paid. In the absence of first level controls (on the spot), is it possible for Managing authorities to get a guarantee from the beneficiaries in order guarantee payments made from possible irregular amounts? If yes, can the cost of these guarantee be considered as eligible expenditure and included in the payment claim to the Commission?

It should be underlined that the legislative framework for the implementation of the ESI Funds programmes remains fully applicable even under the current exceptional circumstances. 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. Therefore management verifications by managing authorities and their intermediate bodies and audits performed by the audit authorities should continue to verify compliance with applicable rules.

Furthermore, the outbreak is not necessarily to be regarded as a force majeure event in all cases. Instead, the Commission considers that careful case-by-case assessment in the light of relevant circumstances and in line with the applicable legal framework is always required (please see also the reply on force majeure).

Under article 125(5)b) of the CPR, on-the-spot checks by the managing authorities or intermediate bodies can already be done for a risk-basis sample since the beginning of the programming period. In this context we refer to chapter 1.7 of the Commission guidance on management verifications, section “on-the-spot verifications”.

Their extent and timing depends on the characteristics of the operation. There is therefore no date “until which facilitation to use only risk-based approach for on-the-spot checks can be applied”, as referred to in the question. The possibility for on the spot verifications on a risk based sample pre existed the Covid 19 crisis and will continue to apply after it. It may have an effect on the normal Management and Control Procedures that have been set up at national level and, of course, there may be a discrepancy there e.g. in case all projects are visited on-spot. If the latter should be the case, it is recommended to add an addendum specifying the exceptional circumstances and their impact on the verifications.

The crisis does not alter the requirement for compliance with applicable rules and the management verifications and audits should continue to verify compliance with applicable rules. As per normal and usual rules, desk management verifications should be carried out before submitting payments and the on the spot verifications should be completed by submission of the accounts in February 2021. It is acknowledged that the on the spot verifications by the managing authority may have to be reduced and/or concentrated into a shorter period. The managing authority should therefore direct its available resources to the riskiest operations when planning its on the spot verifications and try to maximise the use of e-Cohesion for its desk based verifications. Any irregularities identified during these verifications, and corrective action taken before the audit authority had drawn its sample, would be taken into account in the normal way for the treatment of errors by the audit authority. However, if, due to the Covid crisis, the on the spot verifications are delayed until after the audit authority’s sample has been drawn and these verifications identify an irregularity in an operation in the audit authority’s sample, the Commission would not consider the circumstances as a valid reason for the absence of quantification of such an irregularity by the audit authority, in line with applicable rules and guidance.

It is therefore advisable for the programme authorities MA and AA to carefully coordinate and ensure that the MA verification plan can be shared with the AA before they draw their sample, and verifications carried out before the AA audits.

PL	How Force majeure can be indicated in the management and control system? In our opinion COVID has affected most of all: 1) Selection of operations 2) Management verifications 3) Procedures for drawing up and submitting payment applications 4) Audits performance. Can EC agree that negative Category in audit assessment cannot be granted in these categories (3 or 4) unless AA and EC has the evidence that the rules were intentionally abused?
PL	What is the exact date until which facilitation to use only risk-based approach for on-the-spot checks can be applied? In our opinion it should be defined on the level of MS, depending on official MS regulations/acts etc.
PL	When on-the-spot checks will be running again, MAs will have quite huge burden of work to be done. Not all projects will be controlled at once. If Audit Authority starts on-spot checks of projects that were planned for on-spot checks of MA/IB and it has been just the matter of time - any irregularities found in such projects by AA should not be counted to ERROR RATE. Irregularities in such cases were not corrected because of force majeure, not because of weakness of the control system.

We note the difficulties being encountered by the MA to pay beneficiaries within the 90 day deadline in accordance with Article 132 (1) CPR under the current circumstances. However, payments to beneficiaries should not be delayed to ensure these liquidities, in particular for outputs that have been delivered. We also take note that the MA is in contact with beneficiaries for ad hoc measures in case of liquidity problems of the beneficiaries. However when it comes to submitting interim payment applications to the EC, the desk management verifications should have been carried out. Compliance with legal applicable rules is still a requirement. Therefore management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules.

Article 125(5)(b) 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-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)(b) 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-the-spot verifications they deem necessary after declaring the expenditure to the Commission and before submitting the accounts, e.g. still in the 2nd half of 2020.

DE-CZ	In Bavaria, the colleagues responsible for the management verifications are currently almost entirely withdrawn from the processing of payment claims of beneficiaries in favour of the processing of “Emergency Assistance Corona” for the Bavarian economy. For the time being, it is therefore not possible to guarantee the 90-day period for payment in accordance with Article 132 (1) of Regulation (EU) No 1303/2013. However, we are in contact with our beneficiaries and will, on the part of the managing authority, react with ad hoc measures in case of liquidity problems of the beneficiaries.

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?

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.

Compliance with applicable law and the assurance process for ESIF expenditure remains fundamental. Therefore, expenditure declared to the Commission for COVID related measures should not be excluded from the population from which the audit authorities draw their random statistical sample.

Management verifications and audits performed by the audit authorities should continue to verify compliance with applicable rules. Where the applicable rules are altered in the framework of the CRII measures, both Managing and Audit Authorities will need to take into account the amended legal provisions. This includes the amended CPR as well as the temporary State aid framework with their broadened scope and funding possibilities. Furthermore, the EU procurement directives already envisage specific rules for urgent and unforeseen circumstances. These are available for health supplies and services, as for any other sectors.

To limit administrative complexities in the implementation of the COVID measures and later on audit issues, managing authorities can also make use of simplified cost options, for example standard scales of unit costs, lump sums or flat-rate financing established through a draft budget agreed by the managing authority on a case-by-case basis for operations where the public support does not exceed EUR 100 000 (Article 67 (5) aa CPR).

FR	Pouvez-vous nous indiquer votre préférence entre la modification des axes existants et la création d'un axe COVID spécifique ? Je me dis que cette dernière solution est la plus lisible pour tout le monde. PROPOSITION de l'Autorité de gestion : Je trouverai opérationnel d'avoir un axe COVID spécifique alimenté par des transferts de fonds. En Nouvelle-Aquitaine, cela pourrait couvrir les dépenses suivantes : - Fourniture de matériel médical et de protection aux hôpitaux : masques, vêtements, respirateurs, etc, - Aides aux entreprises : aide forfaitaire pour soutenir les PME et maintenir les emplois - Travaux dans les hôpitaux pour répondre au COVID - Accompagnement des entreprises qui réorientent leur production vers des biens essentiels pour lutter contre le COVID - Prise en charge des frais de personnel supplémentaires (personnel soignant ou autres) des établissements de santé - Mise en place d'outils numériques Avec un axe, on pourrait isoler les opérations COVID, en leur appliquant des règles plus légères en matière de formalisme administratif et de contrôle. Je propose par exemple qu'on sorte ces opérations des plans de contrôle. Je pense que cela est possible car les montants vont être limités compte tenu de l'avancement de nos programmes.

The COVID-19 outbreak provoked an unprecedented crisis and required exceptional measures to be applied. In this respect, the Commission launched a Coronavirus Response Investment Initiative (CRII) to mobilise cohesion policy 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 first package of measures proposed by the Commission and adopted on 30 March 2020 introduced a number of important changes that allow for a more effective response in the current situation. In the meantime, the effects on economies and societies became ever more serious. It proved therefore necessary – as part of a second set of measures presented on 2 April 2020 – to go beyond what is already possible and provide exceptional additional flexibility to respond to the current unprecedented situation.

- In addition, the Commission has made available guidance (available under the link below) on how to use all the flexibilities offered by the EU public procurement framework in the emergency situation caused by the coronavirus outbreak. It provides an overview of the choice of tendering procedures available to contracting authorities and applicable deadlines. The guidance points out possibilities, which range from considerable shortening of the generally applicable deadlines to procuring without prior publication of tender notices in exceptional circumstances, such as the extreme urgency linked to the fight against coronavirus. It also provides clarification for example on how in this situation of scarcity of key supplies contracting authorities could find alternative solutions and ways of engaging with the market.

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG

After consulting the Member States to activate Article 107(3)(b) TFEU, which provides that “may be considered compatible with the internal market [...] aid intended to remedy a serious disturbance in the economy of a Member State”, the Commission has also adopted a temporary framework for State aid intended to support the economy in the current COVID-19 outbreak. As a first step, it is planned to implement this framework until the end of December 2020. The Commission will then assess whether or not it is necessary to extend it. The full text of the Temporary Framework can be found under the following link:

https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf.

An amendment of this Temporary framework adopted on 3 April 2020 provides for greater simplification and flexibility to facilitate public support to tackle the consequences of the COVID-19 outbreak. https://ec.europa.eu/commission/presscorner/detail/en/ip_20_570 and

https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_1st_amendment_temporary_framework_en.pdf

-Furthermore, as part of a second set of measures to respond to the current unprecedented situation, additional flexibility is provided in the amendment proposals included in the CRII Plus package proposed by the Commission. For example, in order to eliminate administrative burden, unnecessary under the present circumstances, the deadline for the submission of annual implementation report in 2020 is postponed.

- However, the COVID-19 outbreak does not alter the requirement for compliance with applicable rules. 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. Therefore management verifications by managing authorities and their intermediate bodies and audits performed by the audit authorities should continue to verify compliance with applicable rules.

- Article 125(5)(b) CPR provides for the managing authority to carry out on the spot verifications of operations, the frequency and coverage of which are to be proportionate to the amount of public support and level of risk identified. 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-the-spot checks by the managing authorities or intermediate bodies under Article 125(5)b) CPR are done only for a risk-basis sample (the same line applies to verifications under Article 23 of the ETC regulation). 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-the-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.

DE	Do the existing mechanisms and procedures for the financial and administrative implementation of the programmes remain unchanged?