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Amended proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 28 November 2018, the Commission presented its strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy by 2050¹. The strategy shows how Europe can lead the way to climate neutrality by investing into realistic technological solutions, empowering citizens, and aligning action in key areas such as industrial policy, finance, or research, while ensuring social fairness for a just transition.

As set out in the European Green Deal Communication², the Commission proposes a Just Transition Mechanism to complement the budgetary and legal proposals already tabled for 2021-2027. The Just Transition Mechanism includes a Just Transition Fund implemented under cohesion policy. The Just Transition Fund is set up through a dedicated regulation, which lays down its specific objective, its geographical coverage, the methodology on the allocation of financial resources and the content of the territorial just transition plans required to underpin the programming.

The Just Transition Fund will be complementary to the proposed cohesion policy funds, including the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+') and the Cohesion Fund and thus implemented under cohesion policy. Its overall management therefore will be governed by the provisions set out under the proposal for a Regulation laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument ('Common Provisions Regulation'). Therefore, this proposal needs to be amended in order to embed the Just Transition Fund as a new Fund under cohesion policy.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

EU action is justified by Article 174, paragraph 1, TFEU: 'The Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions'.

• Subsidiarity and proportionality

In accordance with Article 4(2) TFEU the Union has shared competence with Member States in the area of economic, social and territorial cohesion as well as regarding certain aspects of social policy. It has also competence to carry out actions to support, coordinate or supplement the actions of the Member States in the area of education and vocational training as well as industry (Article 6 TFEU).

Shared management aims to ensure that decisions are taken as closely as possible to the citizens and that EU-level action is justified in light of the possibilities and specificities at

¹ "A Clean Planet for all European strategic long-term vision for a prosperous, modern, competitive and climate neutral economy", Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank - COM(2018) 773 final.

² See COM(2019) 640 final.

national, regional or local level. Shared management brings Europe closer to its citizens and connects local needs with European objectives. Moreover, it increases ownership of EU objectives, as Member States and the Commission share decision-making power and responsibility and jointly co-finance the programmes.

- **Choice of the instrument**

This Regulation amends the proposal for the Common Provisions Regulation³.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

The explanatory memorandum of the initial proposal for the Common Provisions Regulation details the public and stakeholders consultations carried out and the way the corresponding outputs have been reflected. The present amendment does not require additional consultation.

- **Evaluations and impact assessments**

The explanatory memorandum of the initial proposal for the Common Provisions Regulation details the outcome of *ex-post* and interim evaluations carried out to support the proposal.

It also confirms that this Regulation is not subject to an impact assessment, since it sets common rules and a delivery mechanism for different policies and Funds under shared management. The Regulations specific for each Fund providing support, on the other hand, are accompanied by their own impact assessments.

4. BUDGETARY IMPLICATIONS

The Commission seeks to pursue its priorities as set out in the political guidelines as part of the broader ambition for the EU budget. An ambitious Just Transition Fund is a priority in that context. This is the reason why the Commission has tabled very early in its mandate the legislative proposal for the Just Transition Fund which is complementary to and comes on top of existing proposals for the next Multiannual Financial Framework ('MFF'). The proposal, as well as this amendment of the Commission's proposal for the Common Provisions Regulation, will feed into the negotiation on the next MFF and expectedly will be integrated into the framework of an overall agreement on the next MFF.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

The legal framework consists of a dedicated proposal for a Just Transition Fund Regulation and targeted modifications to the Commission's proposal for the Common Provisions Regulation.

The delivery and implementation of the Just Transition Fund will be governed by the Common Provisions Regulation, which has to be amended.

The main amendments introduced relate to the following:

- Adjustments to the content requirements for the Partnership Agreement and programmes receiving support from the Just Transition Fund. These set out in particular the obligation to submit territorial just transition plans, as defined in the

³ COM(2018) 375 final.

proposal for a Just Transition Fund Regulation, as an annex to the programmes involving support from the Just Transition Fund.

- Description of the mechanism and rules governing the obligatory transfer of ERDF and ESF+ resources to the Just Transition Fund, on the basis of the type of interventions to be supported.
- Application of the provisions set out in the Common Provisions Regulation and in the proposal for a Just Transition Fund Regulation to the complementary ERDF/ESF+ resources to ensure that a single set of rules is applicable to all Just Transition Fund resources (single pool of resources with single set of rules).
- Explanation that the bases for the calculation of the thematic concentration requirements for the ERDF and the ESF+ do not include the amounts transferred from the ERDF and ESF+ as complementary resources to the Just Transition Fund.

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Commission proposal COM(2018) 375 is amended as follows:

- (1) the title of the proposal is replaced by the following:

"Proposal for a

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laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument";

- (2) recital (2) is replaced by the following:

"(2) In order to further develop a coordinated and harmonised implementation of Union Funds implemented under shared management namely the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the Just Transition Fund ('JTF'), measures financed under shared management in the European Maritime and Fisheries Fund ('EMFF'), the Asylum and Migration Fund ('AMIF'), Internal Security Fund ('ISF') and Integrated Border Management Fund ('BMVI'), financial rules based on Article 322 of the TFEU should be established for all these Funds ('the Funds'), clearly specifying the scope of application of the relevant provisions. In addition, common provisions based on Article 177 of the TFEU should be established to cover policy-specific rules for the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF.";

- (3) recital (8) is replaced by the following:

"(8) In order to contribute to Union priorities, the Funds should focus their support on a limited number of policy objectives in line with their Fund-specific missions pursuant to their Treaty-based objectives. The policy objectives for the AMIF, the ISF and the BMVI should be set out in the respective Funds-specific regulations. The JTF and the resources of the ERDF and the ESF+ that are transferred as a complementary support to the JTF, should contribute to a single specific objective.";

- (4) in recital (19), the first sentence is replaced by the following:

"The Member State should carry out a mid-term review of each programme supported by the ERDF, the ESF+, the Cohesion Fund and the JTF. ";

- (5) the following recital (22a) is inserted:

"(22a) In order to enhance the effectiveness of the JTF, complementary resources from the ERDF and the ESF+ should be made available to the JTF. Those complementary resources should be provided through a specific obligatory transfer from those funds to the JTF taking into account the transition challenges set out in the territorial just transition plans, which need to be addressed. Amounts to be transferred should be provided from resources of the categories of regions where the territories identified in territorial just transition plans are located. Given these specific arrangements for the use of the JTF resources, only the specific transfer mechanism should apply for the constitution of the JTF resources. Furthermore, it should be clarified that only the provisions of this Regulation and of Regulation (EU) [JTF Regulation] should apply to the JTF and to the resources of the ERDF and the ESF+ transferred to the JTF, which also become JTF support. Neither Regulation (EU) [ERDF/CF Regulation] nor Regulation (EU) [ESF+ Regulation] should apply to the complementary support. Therefore, the ERDF resources transferred as a complementary support to the JTF should be excluded from the basis of calculation of the thematic concentration requirements set out in Article 3 of Regulation (EU) [ERDF/CF Regulation] and from the basis of calculation of minimum allocations to sustainable urban development as set out in Article 9 of Regulation (EU) [ERDF/CF Regulation]. The same applies to the ESF+ resources transferred as a complementary support to the JTF in respect of thematic concentration requirements set out in Article 7 of Regulation (EU) [ESF+ Regulation].";

- (6) recital (27) is replaced by the following:

"(27) In order to examine the performance of the programmes, the Member State should set up monitoring committees. For the ERDF, the ESF+ and the Cohesion Fund, annual implementation reports should be replaced by an annual structured policy dialogue based on the latest information and data on programme implementation made available by the Member State. The annual review meeting should be organised also for programmes covering the JTF.";

- (7) recital (39) is replaced by the following:

"(39) With a view to improving complementarities and simplifying implementation, it should be possible to combine support from the Cohesion Fund, the JTF and the ERDF with support from the ESF+ in joint programmes under the Investment for jobs and growth goal.";

- (8) Article 1 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. This Regulation lays down:

- (a) financial rules for the European Regional Development Fund ('ERDF'), the European Social Fund Plus ('ESF+'), the Cohesion Fund, the Just Transition Fund ('JTF'), the European Maritime and Fisheries Fund ('EMFF'), the Asylum and Migration Fund ('AMIF'), the Internal Security Fund ('ISF') and the Border Management and Visa Instrument ('BMVI') ('the Funds');
- (b) common provisions applicable to the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF.";

- (b) in paragraph 6, the following point (h) is inserted:

"(h) Regulation (EU) [JTF Regulation] (the 'JTF Regulation')(*).

(*) OJ L , , p. .";

(9) Article 4 is amended as follows:

(a) in paragraph 1, the following subparagraphs are added:

"The JTF shall support the specific objective of enabling regions and people to address the social, economic and environmental impacts of the transition towards a climate-neutral economy".

The first subparagraph of paragraph 1 shall not apply to the resources of the ERDF and the ESF+ that are transferred to the JTF in accordance with Article 21a.;

(b) paragraph 2 is replaced by the following:

"2. The ERDF, the ESF+, the Cohesion Fund and the JTF shall contribute to the actions of the Union leading to the strengthening of its economic, social and territorial cohesion in accordance with Article 174 TFEU by pursuing the following goals:

(a) Investment for jobs and growth in Member States and regions, to be supported by the ERDF, the ESF+, the Cohesion Fund and the JTF; and

(b) European territorial cooperation (Interreg), to be supported by the ERDF.";

(c) in paragraph 3, the last sentence is replaced by the following:

"In the case of the ERDF, the ESF+, the Cohesion Fund and the JTF weightings shall be attached to dimensions and codes for the types of intervention established in Annex I.";

(10) Article 8 is amended as follows:

(a) point (a) is replaced by the following:

"(a) the selected policy objectives and the specific objective of the JTF, indicating by which of the Funds and programmes they will be pursued and a justification thereto, and where relevant, a justification for using the delivery mode of the InvestEU, taking into account relevant country-specific recommendations;"

(b) in point (b), the introductory part is replaced by the following:

"(b) for each of the selected policy objectives referred to in point (a) and the specific objective of the JTF;"

(c) point (c) is replaced by the following:

"(c) the preliminary financial allocation from each of the Funds by policy objective at national level, respecting Fund-specific rules on thematic concentration and the preliminary financial allocation for the specific objective of the JTF including any ERDF and ESF+ resources to be transferred to the JTF in accordance with Article 21a;"

(11) Article 10 is amended as follows:

(a) the title of the Article is replaced by the following:

"Article 10

Use of the ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF delivered through InvestEU";

- (b) in paragraph 1, the first sentence is replaced by the following:

"1. Member States may allocate, in the Partnership Agreement or in the request for an amendment of a programme, the amount of ERDF, the ESF+, the Cohesion Fund, the JTF and the EMFF to be contributed to InvestEU and delivered through budgetary guarantees.";

- (12) in Article 11, paragraph 7 is replaced by the following:

"7. Annex IV shall not apply to programmes supported by the EMFF.

Annex IV shall also not apply to priorities supported by the JTF and to the ERDF and the ESF+ resources transferred to the JTF in accordance with Article 21a. ";

- (13) in Article 14, paragraph 1 is amended as follows:

- (a) the introductory part is replaced by the following:

"1. For programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF, the Member State shall review each programme, taking into account the following elements:";

- (b) the following point (e) is added:

" (e) in addition, for programmes supported by the JTF, the assessment carried out by the Commission, pursuant to point (b) of Article 29(1) of Regulation (EU) 2018/1999^(*).

(*) Regulation (EU) No 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council.";

- (14) Article 17 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. Each programme shall set out a strategy for the programme's contribution to the policy objectives or to the specific objective of the JTF and the communication of its results.";

- (b) in paragraph 2, the first subparagraph is replaced by the following:

"2. A programme shall consist of priorities. Each priority shall correspond to a single policy objective or to the specific objective of the JTF or to technical assistance. A priority corresponding to a policy objective shall consist of one or more specific objectives. More than one priority may correspond to the same policy objective or to the specific objective of the JTF.";

- (c) paragraph 3 is amended as follows:

- (i) in point (a), the following point (viii) is added:

"(viii) in addition, for programmes supported by the JTF, transition challenges identified in the territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation];";

(ii) point (d) is amended as follows:

- point (i) is replaced by the following:

"(i) the related types of actions, including a list of planned operations of strategic importance, and their expected contribution to those specific objectives, to macro-regional strategies, sea-basin strategies, and to territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation] supported by the JTF, where appropriate;";

- the following point (viii) is added:

"(viii) in addition, for the specific objective of the JTF, the justification of amounts transferred respectively from the ERDF and the ESF+ resources in accordance with Article 21a, as well as their breakdown by category of regions, reflecting the types of interventions planned in accordance with the territorial just transition plans set out in Article [7] of Regulation (EU) [JTF Regulation];";

(iii) in point (f), point (i) is replaced by the following:

"(i) a table specifying the total financial allocations for each of the Funds and for each category of region for the whole programming period and by year, including any amounts transferred pursuant to Article 21 or to Article 21a;";

(d) paragraph 6 is replaced by the following:

"(6) For ERDF, ESF+, Cohesion Fund and JTF programmes submitted in accordance with Article 16, the table referred to in paragraph (3)(f)(ii) shall include the amounts for the years 2021 to 2025 only.";

(e) the following paragraph 8 is added:

"8. For programmes supported by the JTF, Member States shall submit to the Commission the territorial just transition plans as set out in Article [7] of Regulation (EU) [JTF Regulation] as part of the programme or of a request for its amendment.";

(15) in paragraph 5 of Article 19, the first subparagraph is replaced by the following:

"5. The Member State may transfer during the programming period an amount of up to 5% of the initial allocation of a priority and no more than 3% of the programme budget to another priority of the same Fund of the same programme. For the programmes supported by the ERDF, the ESF+ and the JTF, the transfer shall only concern allocations for the same category of region.";

(16) Article 20 is replaced by the following:

"Article 20

Joint support from the ERDF, the ESF+, the JTF and the Cohesion Fund

1. The ERDF, the ESF+, the JTF and the Cohesion Fund may jointly provide support for programmes under the Investment for jobs and growth goal.

2. The ERDF and the ESF+ may finance, in a complementary manner and subject to a limit of 10% of support from those Funds for each priority of a programme, all or part of an operation for which the costs are eligible for support from the other Fund on the basis of eligibility rules applied to that Fund, provided that such costs are necessary for the implementation. That option shall not apply to the resources of the ERDF and the ESF+ that are transferred to the JTF in accordance with Article 21a.";

(17) in Article 21, the following paragraph 6 is added:

"6. JTF resources, including the resources transferred from the ERDF and the ESF+ in accordance with Article 21a, shall not be transferable to other Funds or instruments pursuant to paragraphs 1 to 5.

The JTF shall not receive transfers pursuant to paragraphs 1 to 5.

The transfer of resources from the ERDF and the ESF+ to the JTF in accordance with Article 21a shall be excluded from the basis of calculation for the purposes of the 5% ceiling established in paragraph 1. ";

(18) the following Article 21a is inserted:

"Article 21a

Transfer of resources from the ERDF and the ESF+ to the JTF

1. The amount of resources available for the JTF under the Investment for jobs and growth goal in accordance with Article [3] of Regulation (EU) [JTF Regulation], shall be complemented with resources from the ERDF, the ESF+ or a combination thereof, of the category of regions where the concerned territory is located. The total of the ERDF and the ESF+ resources transferred to the JTF shall be at least one and half times the amount of JTF support, but shall not exceed three times the amount of that support. In no case shall the resources transferred from either the ERDF or the ESF+ exceed 20% of the respective ERDF and ESF+ allocation to the Member State concerned.

The respective transfers from the ERDF and the ESF+ resources to the priority or priorities supported by the JTF shall reflect the types of interventions in accordance with the information set out in the programme pursuant to point (viii) of Article 17(3)(d). Such transfers shall be considered definitive.

2. The JTF resources, including the resources transferred from the ERDF and the ESF+, shall be implemented in accordance with the rules set out in this Regulation and in Regulation (EU) [JTF Regulation]. The rules set out in Regulation (EU) [ERDF/CF Regulation] and in Regulation (EU) [ESF+ Regulation] shall not apply to the ERDF and ESF+ resources transferred in accordance with paragraph 1.";

(19) in Article 25, paragraph 1 is replaced by the following:

"1. The ERDF, the ESF+, the JTF and the EMFF may support community-led local development.";

(20) in paragraph 2 of Article 31, the following point (e) is inserted:

"(e) for the JTF support: 3,25%.";

(21) in paragraph 2 of Article 35, point (b) is replaced by the following:

"(b) the annual performance reports for programmes supported by the EMFF, the AMF, the ISF and the BMVI, and the final performance report for programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF;"

(22) in paragraph 3 of Article 36, the first subparagraph is replaced by the following:

"3. For programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF, the Member State shall no later than one month before the annual review meeting provide the Commission with the information on the elements listed in Article 35(1).";

(23) in Article 38, paragraph 1 is replaced by the following:

"1. For programmes supported by the ERDF, the ESF+, the Cohesion Fund and the JTF, each managing authority shall submit to the Commission a final performance report of the programme by 15 February 2031.";

(24) in point (c) of Article 45(1), point (ii) is replaced by the following:

"(ii) operations supported by the ESF+, the JTF, the EMFF, the ISF, the AMIF and the BMVI the total cost of which exceeds EUR 100 000;"

(25) in paragraph 1 of Article 48, the second subparagraph is replaced by the following:

"Where the total cost of an operation does not exceed EUR 200 000, the contribution provided to the beneficiary from the ERDF, the ESF+, the JTF, the AMIF, the ISF and the BMVI shall take the form of unit costs, lump sums or flat rates, except for operations for which the support constitutes State aid. Where flat-rate financing is used, only the categories of costs to which the flat-rate applies may be reimbursed in accordance with point (a) of the first sub-paragraph.";

(26) in Article 51, paragraph 2 is replaced by the following:

"2. For operations supported by the AMIF, the ISF, the BMVI, the ESF+, the JTF and the ERDF, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate.";

(27) Article 57 is amended as follows:

(a) in paragraph 3, the following subparagraph is added:

"For the JTF, expenditure related to operations shall contribute to the implementation of the relevant territorial just transition plan set out in accordance with Article [7] of the Regulation (EU) [JTF Regulation].";

(b) in paragraph 7, the second subparagraph is replaced by the following:

"For the ERDF, the Cohesion Fund and the JTF, that shall be the case where a new type of intervention referred to in Table 1 of Annex I or, for the AMIF, the ISF and the BMVI, in the Fund-specific Regulations is added in the programme.";

(28) in Article 59, paragraph 2 is replaced by the following:

"2. Operations supported by the ESF+ or by the JTF in accordance with [points (h), (i) and (j) of Article [4(2)]] of Regulation (EU) [JTF Regulation] shall repay the support when they are subject to an obligation for maintenance of investment under State aid rules.";

(29) in paragraph 2 of Article 73, the second subparagraph is replaced by the following:

"The statistical sample may cover one or more programmes receiving support from the ERDF, the Cohesion Fund, the JTF and the ESF+ and, subject to stratification where appropriate, one or more programming periods according to the professional judgement of the audit authority.";

(30) in paragraph 3 of Article 74, the first subparagraph is replaced by the following:

"3. Operations for which the total eligible expenditure does not exceed EUR 400 000 for the ERDF and the Cohesion Fund, EUR 300 000 for the ESF+ and the JTF, EUR 200 000 for the EMFF, the AMIF, the ISF and the BMVI shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed.";

(31) in Article 96, paragraph 5 is replaced by the following:

"5. With regard to the final accounting year, the Commission shall pay or recover the annual balance of the accounts for programmes supported by the ERDF, the ESF+, the JTF and the Cohesion Fund no later than two months after the date of acceptance of the final performance report as referred to in Article 38.";

(32) in Article 98, the following paragraph 6 is added:

"6. The Fund-specific rules for the JTF may lay down specific bases for financial corrections by the Commission linked to the under-achievement of targets established for the JTF.";

(33) in Article 99, paragraph 3 is replaced by the following:

"3. The part of commitments still open on 31 December 2029 shall be decommitted if the assurance package and the final performance report for programmes supported by the ESF+, the ERDF, the Cohesion Fund and the JTF have not been submitted to the Commission by the time limit set out in Article 38(1).";

(34) in paragraph 3 of Article 106, the following subparagraph is inserted:

"The co-financing rate for the priority supported by the JTF shall not be higher than the co-financing rates set out in points (a), (b) and (c) of the first subparagraph applicable to the region where the territory or territories identified in the territorial just transition plans in accordance with Article [7] of Regulation (EU) [JTF Regulation] are located.";

(35) Annexes I, II, V and VII are amended in accordance with the Annex to this proposal.

Done at Brussels,

For the European Parliament
The President

For the Council
The President