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CONTRIBUTION

From: General Secretariat of the Council
To: Ad hoc Working Party on the Social Climate Fund

Subject: Fit for 55 package - Social Climate Fund: Follow-up to the AHWP SCF on 14 February 2022 - Comments by delegations

Following the call for comments set out in WK 1719/2022 on block 3 (Eligibility) and block 4 (Management and Control) of the Social Climate Fund regulation, delegations will find attached the comments received from the [REDACTED] NL, [REDACTED] and [REDACTED] delegations, as well as a joint comment from the [REDACTED] and [REDACTED] delegations.

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Comments from the Netherlands

We would like to thank the Presidency for facilitating this round of written comments. We would like to again wish them best of luck in bringing Member States' input to a fruitful conclusion in the coming period.

For us, it remains important to note our overall stance regarding negotiations on the SCF. We remain hesitant to introduce new funds and revise the MFF-regulation and the next MFF should not be pre-empted. Furthermore, we will consider our ultimate position on the SCF in the light of the result of negotiations regarding the Ff55 proposals as a whole. Our comments, suggestions, and proposals that we will make until we have a final overall position therefore remain provisional, but we hope they can contribute to the technical discussion nonetheless.

Comments and suggestions on block 3 and 4;

Overall

The Netherlands is of the opinion that the scope for the SCF proposed by the Commission should not be broadened. Given that the SCF is already of significant risk of overlap with existing funds, and further extension could risk a duplication of Union efforts and diluting of the means within the Fund. Should a SCF be created, it will be most effective if it is targeted to the most vulnerable.

To achieve the SCF's stated objectives, it is of key concern that the fund maintains its performance based structure. We consider the Commission's proposed management mode to be compatible with this view and therefore support it. This includes the proposed fund's performance based nature tied to payment based on milestones. Finally, we support the call for clarity on the indicators and prefer to have them included in the annex.

Direct contribution to the transition

Furthermore, for a potential SCF to be considered an integral part of the FF55 proposal, it must maintain a strong and direct link to the package's climate goals. In particular, it must maintain its link with the ETS-BRT and clarify this in relevant articles. The SCF must contain a strong focus on emissions reduction while fulfilling its stated objective of contributing to the transition towards climate neutrality.

To accomplish this focus on emissions reduction, there is a need for a strong stance towards the potential applications of the fund, with sustainable investments being the main focus of the fund. This should be reflected in the proposal's articles. Should direct income support become a part of the SCF, it must clearly be considered a last resort and should come with strictly defined conditions and hard limits. This focus should also be reflected in the text of the proposal. Currently, we do not believe the proposal's provisions for conditions and limits to be adequate.

Additionally, all supported measures should be demonstrably fully compliant with the *do no significant harm* principle. This means the exclusion of any direct or indirect support for fossil fuels such as natural gas, as it would be unthinkable to allow for European funding of such measures even beyond the current decade. We invite the Commission and the Presidency to take the direct contribution of the SCF to our climate goals into account in preparation for the coming AHWP.

Additionality

Furthermore, the Netherlands is of the opinion that the creation of new European funds can only be considered when these are clearly additional to existing policies and programs. It is therefore crucial that the SCF contains strong provisions for the safeguarding and supervision thereof.

Provisions on financial security and fraud

Should a SCF be created, it must contain strong provisions to prevent, detect, and correct corruption, fraud, and conflicts of interest. We invite the Commission to provide further information on how they expect the SCF's provisions to accomplish this, and how they intend to support Member States in applying these provisions. Public procurement should follow the rules stipulated for the Common Provisions Regulation.

MFF

There should be no pre-empting the 2028-2034 MFF. Future budgets should be considered on itself.

Annex III

Principally the SCF should not contain requirements for control systems that go beyond what is necessary, with special attention for the lessons learned for those stipulated in the RRF. Administration costs and control expenses should be kept balanced with regards to the funding received.

Article suggestions

Article 1

Subject matter, scope and objectives

The Social Climate Fund ('the Fund') is established.

It shall provide support to Member States for the financing of the measures and investments included in their Social Climate Plans ('the Plans').

The measures and investments supported by the Fund shall benefit households, micro-enterprises and transport users, which are vulnerable and particularly affected by the inclusion of greenhouse gas emissions from buildings and road transport into the scope of Directive 2003/87/EC, especially households in energy poverty and citizens without public transport alternative to individual cars (in remote and rural areas).

The general objective of the Fund is to contribute to the transition towards climate neutrality by addressing the social impacts of the inclusion of greenhouse gas emissions from buildings and road transport into the scope of Directive 2003/87/EC. The specific objective of the Fund is to support vulnerable households, vulnerable micro-enterprises and vulnerable transport users **through temporary direct income support and** through measures and investments intended to increase energy efficiency of buildings, decarbonisation of heating and cooling of buildings, including the integration of energy from renewable sources, and granting improved access to zero- and low-emission mobility and transport, **and temporary direct income support.**

Explanation:

Temporary direct income support is a last resort measure and should thus be referenced last.

Article 3

Social Climate Plans

1. Each Member State shall submit to the Commission a Social Climate Plan ('the Plan') together with the update to the integrated national energy and climate plan referred to in Article 14(2) of Regulation (EU) 2018/1999 in accordance with the procedure and timeline laid down in that Article. The Plan shall contain a coherent set of measures and investments to address the impact of carbon pricing on vulnerable households, vulnerable micro-enterprises and vulnerable transport users in order to ensure affordable heating, cooling and mobility while accompanying an accelerating necessary measures to meet the climate targets of the Union.

~~2. The Plan may include national measures providing temporary direct income support~~

~~to vulnerable households and households that are vulnerable transport users to reduce the impact of the increase in the price of fossil fuels resulting from the inclusion of buildings and road transport into the scope of Directive 2003/87/EC.~~

~~3.2.~~ The Plan shall include national projects to:

(a) finance measures and investments to increase energy efficiency of buildings, to implement energy efficiency improvement measures, to carry out building renovation, and to decarbonise heating and cooling of buildings, including the integration of energy production from renewable energy sources;

(b) finance measures and investments to increase the uptake of zero- and low-emission mobility and transport.

3. The Plan may include national measures providing temporary direct income support to vulnerable households and households that are vulnerable transport users to reduce the impact of the increase in the price of fossil fuels resulting from the inclusion of buildings and road transport into the scope of Directive 2003/87/EC.

Explanation:

Temporary direct income support is a last resort measure and should thus be referenced last.

Article 4

The Content of Social Climate Plans

1. Social Climate Plans shall set out in particular the following elements:

(a) concrete measures and investments in accordance with Article 3 to reduce the effects referred to in point (c) of this paragraph together with an explanation of how they would contribute effectively to the achievement of the objectives set out in Article 1 within the overall setting of a Member State's relevant policies;

(b) concrete accompanying measures needed to accomplish the measures and investments of the Plan and reduce the effects referred to in point (c) as well as information on existing or planned financing of measures and investments from other Union, international, public or private sources;

(c) an estimate of the likely effects of that increase in prices on households, and in particular on incidence of energy poverty, on micro-enterprises and on transport users, comprising in particular an estimate and the identification of vulnerable households, vulnerable micro-enterprises and vulnerable transport users; these impacts are to be analysed with a sufficient level of regional disaggregation, taking into account elements such as access to public transport and basic services and identifying the areas mostly affected, particularly territories which are remote and rural;

(d) where the Plan provides for measures referred to in Article 3(2), the criteria for the identification of eligible final recipients, the indication of the envisaged time limit for the measures in question and their justification on the basis of a quantitative estimate and a qualitative explanation of how the measures in the Plan are expected to reduce energy and transport poverty and the vulnerability of households, micro-enterprises and transport users to an increase of road transport and heating fuel prices;

(e) envisaged milestones, targets and an indicative timetable for the implementation of the measures and investments to be completed by 31 July 2032;

(f) the estimated total costs of the Plan accompanied by appropriate cost justification and explanations of how it is in line with the principle of cost efficiency and commensurate to the expected impact of the Plan;

(g) the envisaged national contribution to the total estimated costs, calculated in accordance with Article 14;

(h) an explanation of how the Plan ensures that no investment or measure, included in the Plan does significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852; the Commission shall provide technical guidance to the Member States targeted to the scope of the Fund to that effect; **no explanation is required for the measures referred to in Article 3(2);**

(i) the arrangements for the effective monitoring and implementation of the Plan by the Member State concerned, in particular of the proposed milestones and targets, including indicators for the implementation of measures and investments, which, where relevant, shall be those available with the Statistical office of the European Union European Statistical Office and the European Energy Poverty Observatory as identified by Commission Recommendation 2020/156354 on energy poverty;

(j) for the preparation and, where available, for the implementation of the Plan, a summary of the consultation process, conducted in accordance with Article 10 of Regulation (EU) 2018/1999 and with the national legal framework, of local and regional authorities, social partners, civil society

organisations, youth organisations and other relevant stakeholders, and how the input of the stakeholders is reflected in the Plan;

(k) an explanation of the Member State's system to prevent, detect and correct corruption, fraud and conflicts of interests, when using the funds provided under the Fund, and the arrangements that aim to avoid double funding from the Fund and other Union programmes.

2. The Plans shall be consistent with the information included and the commitments made by the Member States under the European Pillar of Social Rights Action Plan and the European Social Fund Plus (ESF+) established by Regulation (EU) 2021/1057, under their cohesion policy operational programmes under Regulation (EU) 2021/1058, under their Recovery and Resilience Plans in accordance with Regulation (EU) 2021/241 of the European Parliament and of the Council⁵⁶, under their long-term buildings renovation strategies pursuant to Directive 2010/31/EU and under their updated integrated national energy and climate plans under Regulation (EU) 2018/1999. They shall also be complementary to the Just Transition Plans pursuant to Regulation (EU) 2021/1056 of the European Parliament and of the Council.

~~3. When preparing their Plans, Member States may request~~ **Within six months of entry into force of this Regulation, the Commission shall** organise an exchange of good practices **based on the lessons learned in the Regulations referenced in Article 14(2)**. Member States may also request technical support under the ELENA facility, established by an Agreement of the Commission with the European Investment Bank in 2009, or under the Technical Support Instrument established by Regulation (EU) 2021/240 of the European Parliament and of the Council⁵⁸.

4. The Commission shall provide a harmonised convention of calculations to assist Member States in estimating price effects which can be derived from establishing the emission trading system for buildings and road transport established pursuant to Chapter IVa of Directive 2003/87/EC.

Explanation:

The DNSH-principle should be provably respected by all measures supported under a Climate appropriate funds. An exchange of good practices should be organized quickly to smoothen the design and implementation of the Social Climate Plans. Harmonised calculations are necessary to ensure adequate assessment of relevant price effects.

Article 6

Measures and investments to be included in the estimated total costs of the Social Climate

Plans

~~1. Member States may include the costs of measures providing temporary direct income support to vulnerable households and vulnerable households that are transport users to absorb the increase in road transport and heating fuel prices. Such support shall decrease over time and be limited to the direct impact of the emission trading for buildings and road transport. Eligibility for such direct income support shall cease within the time limits identified under Article 4(1) point (d).~~

~~2.~~ **1.** Member States may include the costs of the following measures and investments in the estimated total costs of the Plans, provided they **principally exclusively** benefit vulnerable households, vulnerable micro-enterprises or vulnerable transport users and ~~intend to~~ **principally address the impact of the emission trading for buildings and road transport by:**

(a) support building renovations, especially for those occupying worst-performing buildings, including in the form of financial support or fiscal incentives such as deductibility of renovation costs from the rent, independently of the ownership of the buildings concerned;

(b) contribute to the decarbonisation, including the electrification, of heating and cooling of, and cooking in, buildings and the integration of energy from renewable sources that contribute to the achievements of energy savings;

(c) support public and private entities in developing and providing affordable energy efficiency renovation solutions and appropriate funding instruments in line with the social goals of the Fund;

(d) provide access to zero- and low-emission vehicles and bikes, including financial support or fiscal incentives for their purchase as well as for appropriate public and private infrastructure, including for recharging and refuelling; for support concerning low-emission vehicles, a timetable for gradually reducing the support shall be provided;

(e) grant free access to public transport or adapted tariffs for access to public transport, as well as fostering sustainable mobility on demand and shared mobility services;

(f) support public and private entities in developing and providing affordable zero- and low-emission mobility and transport services and the uptake of attractive active mobility options for rural, insular, mountainous, remote and less accessible areas or for less developed regions or territories, including less developed peri-urban areas

2. Member States may include the costs of measures providing temporary direct income support to vulnerable households and vulnerable households that are transport users to absorb the increase in road transport and heating fuel prices. Such support shall decrease over time and be limited to the direct impact of the emission trading for buildings and road transport. Eligibility for such direct income support shall cease within the time limits identified under Article 4(1) point (d).

Explanation:

Temporary direct income support is a last resort measure and should thus be referenced last.

Article 7

Exclusions from the estimated total costs of Social Climate Plans

1. The Fund shall not support, and the estimated total costs of Plans shall not include measures in the form of direct income support pursuant to Article 3(2) of this Regulation for households already benefiting: (a) from public intervention in the price level of the fuels covered by Chapter IVa of Directive 2003/87/EC; (b) from public interventions in the price setting for the supply of gas in accordance with Article 3(3) of Directive 2009/73/EC;
2. Where it is proven by the Member State concerned in its Plan that the public interventions referred to in paragraph 1 do not fully off-set the price increase resulting from the inclusion of the sectors of buildings and road transport into the scope of Directive 2003/87/EC, direct income support may be included in the estimated total costs in the limits of the price increase not fully off-set. **Member States must make use of the harmonized convention of calculations stipulated in Art 4(4).**

Explanation:

Consistency with the proposed Article 4(4).

Article 12

Additionality and complementary funding

1. Support under the Fund shall be additional to the support provided under other Union funds, programmes and instruments. Measures and investments supported under the Fund may receive support from other Union funds, programmes and instruments, **including InvestEU Programme, the Technical Support Instrument, the Recovery and Resilience Facility, and the Funds covered by Regulation (EU) 2021/1060**, provided that such support does not cover the same cost.
2. Support from the Fund shall be additional and shall not substitute recurring national budgetary expenditure .

Explanation:

Clarification.

Article 20

Protection of the financial interests of the Union

1. In implementing the Fund, the Member States, as beneficiaries of funds under the Fund, shall take all the appropriate measures to protect the financial interests of the Union and to ensure that the use of funds in relation to measures and investments supported by the Fund complies with the applicable Union and national law, in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests. To this effect, the Member States shall provide an effective and efficient internal control system as further detailed in Annex III and the recovery of amounts wrongly paid or incorrectly used. Member States may rely on their regular national budget management systems.
2. The agreements referred to in Article 18 shall provide for the obligations of the Member States:
 - a. to regularly check that the financing provided has been properly used in accordance with all applicable rules and that any measure or investment under the Plan has been properly implemented in accordance with all applicable rules in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests;
 - b. to take appropriate measures to prevent, detect and correct fraud, corruption, and conflicts of interests as defined in Article 61 of Regulation (EU, Euratom) 2018/1046 affecting the financial interests of the Union and to take legal actions to recover funds that have been misappropriated, including in relation to any measure or investment implemented under the Plan;
 - c. to accompany a request for payment by:
 - i. a management declaration that the funds were used for its intended purpose, that the information submitted with the request for payment is complete, accurate and reliable and that the control systems put in place give the necessary assurances that the funds were managed in accordance with all applicable rules, in particular rules on avoidance of conflicts of interests, fraud prevention, corruption and double funding from the Fund

- and other Union programmes in accordance with the principle of sound financial management; and
- ii. a summary of the audits carried out in accordance with internationally accepted audit standards, including the scope of these audits in terms of amount of spending covered and period of time covered and an analysis of the weaknesses identified and any corrective actions taken;
- d. for the purpose of audit and control and to provide for comparable information on the use of funds in relation to measures and investments implemented under the Plan, to collect, record and store in an electronic system and ensure access to the following standardised categories of data:
 - i. name of the final recipients of funds, their VAT registration numbers or tax identification numbers and amount of the financial allocation from the Fund;
 - ii. name of the contractor(s) and sub-contractor(s) and their VAT registration number(s) or tax identification number(s) where the final recipient of funds is a contracting authority in accordance with Union or national law on public procurement, and value of the contract(s);
 - iii. first name(s), last name(s), date of birth and VAT registration number(s) or tax identification number(s) of beneficial owner(s) of the recipient of funds or contractor, as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council⁶¹;
 - iv. a list of any measures and investments implemented under the Fund with the total amount of public funding of those measures and investments and indicating the amount of funds paid under other funds financed from the Union budget;
 - e. to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of Regulation (EU, Euratom) 2018/1046 and to impose obligations on all final recipients of funds paid for implementing the measures and investments included in the Plan, or to all other persons or entities involved in their implementation to expressly authorise the Commission, OLAF, the Court of Auditors and, where applicable, EPPO to exert their rights as provided for in Article 129(1) of Regulation (EU, Euratom) 2018/1046 and to impose similar obligations on all final recipients of funds disbursed;
 - f. to keep records in accordance with Article 132 of Regulation (EU, Euratom) 2018/1046.
3. Personal data as referred to in paragraph 2, point (d) of this Article shall be processed by Member States and by the Commission for the purpose, and corresponding duration, of discharge, audit and control, information, communication and publicity proceedings related to the use of funds related to the implementation of the agreements referred to in Article 18. The personal data shall be processed in accordance with Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, whichever is applicable. Within the framework of the discharge procedure to the Commission, in accordance with Article 319 TFEU, the Fund shall be subject to reporting under the integrated financial and accountability reporting referred to in Article 247 of Regulation (EU, Euratom) 2018/1046, and, in particular, separately in the Annual Management and Performance Report.
 4. The Commission shall make available to the Member States an integrated and interoperable information and monitoring system including a single data-mining and risk-scoring tool to access and analyse the relevant data. The Member States shall use the tool for audit and

control purposes to avoid double funding and to prevent, detect and correct fraud, corruption and conflict of interests in relation to the measures and investments supported by the Fund. The Commission, OLAF, the Court of Auditors and, where applicable, EPPO may use the tool within its competences and rights referred to in paragraph 2, point (d) of this Article.

5. The agreements referred to in Article 18 shall also provide for the right of the Commission to reduce proportionately the support under the Fund and recover any amount due to the Union budget, in cases of fraud, corruption, and conflicts of interests affecting the financial interests of the Union that have not been corrected by the Member State, or a serious breach of an obligation resulting from such agreements.
 - a. **When** deciding on the amount of the recovery and reduction the Commission shall respect the principle of proportionality and shall take into account the seriousness of the fraud, corruption and conflict of interests affecting the financial interests of the Union, or of a breach of an obligation.
 - b. **The** Member State shall be given the opportunity to present its observations before the reduction is made.
 - c. **When the support under the Fund for specific Member States is proportionally reduced under Article 20(5), this amount will be reduced from the Fund's total.**

Explanation:

Reduces the administrative burden of rescaling existing Social Climate Plans once implementation of the fund is under way.

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