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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 25 February 2022 - Comments by delegations

Following the call for comments set out in WK 2336/2022 on block 5 (Information and communication, monitoring and evaluation), block 6 (Financial management) and block 7 (Final provisions) of the Social Climate Fund regulation, delegations will find attached the comments received from [REDACTED] NL, [REDACTED] and [REDACTED] delegations as well as joint comments 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 again wish them the 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 believe that the negotiations on 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. 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 5, 6, and 7;

Overall

To achieve the SCF's stated objectives, it is of key concern that the fund maintains its performance based structure tied to payment based on milestones. We consider the Commission's proposed management mode to be compatible with this view and therefore support it. In our eyes, European financing should strike a good balance between the effectiveness and efficiency of supported measures on the one hand and the limitation of unnecessary administrative burdens on the other. Shared management would not be a better mode of achieving this balance. That said, the Netherlands remains open to finding other ways to reduce administrative costs. To move the discussion on the SCF forward, it could be useful to generate a clear overview of member states' concerns regarding shared management and a performance based approach.

Information provision, communication and monitoring - Articles 22 and 23

The Netherlands' supports the near unanimous call for clarity on the proposal's indicators, as the fund's performance based structure is heavily reliant on these. In our view the indicators are an integral part of the Fund's structure and should be included in an annex. We do not consider this an issue as far as planning is concerned, as any process required to determine the indicators after the possible legislative conclusion of the fund would also need to progress quickly. If a possible SCF does contain determination of the indicators as a delegated act, it should have a clearly determine deadline and preclude the ability to alter the indicators after the social climate plans have been implemented. Moreover, the progress reports should also include quantitative information on the emission impacts of measures and projects and information concerning the progress towards reaching the 2030 target and the 2050 climate neutrality target.

Evaluation - Article 24

The Netherlands is happy to note that the proposed evaluation includes an analysis of whether the fund's resources have been used effectively, and whether the dedicated resources are still fit for purpose. However, such evaluation should naturally not be used as a mere pretext to increase the fund's size. We remain hesitant to introduce new funds and revise the MFF-regulation, and believe that the negotiations on the next MFF should not be pre-empted. Furthermore, we echo the call for further clarity on Article 24(3), which should set out clearly differentiated requirement for the mid-term evaluation and the *ex post* evaluation of the SCF.

Financial methodology – Articles 9, 10, 11, 18 (1 and 3), and 19

The Netherlands is of the opinion that the financial methodology of a possible SCF should be in line with such a fund's performance based nature. This should include suitable limitations on the fund's administrative burden, strong incentivization to prevent excessive managing costs, and clear controls on the administrative expenses that can be financed through the fund by the Commission as well as by Member States. Furthermore, there should be a strong incentive to fulfill the milestones and targets needed for the fund's performance based nature. This necessitates clarity on when and how Member States' allocations can be reduced or even terminated. Additionally, funds allocated under a potential SCF should not be transferable to funds with less specific objectives.

During the ad hoc working party on the 25th of February, the Commission explained that the timing and proportion of payments under the SCF are dependent on the individual agreements made between Member States and the Commission under the Member States' social climate plans, meaning payments could be front- or backloaded. The Netherlands is of the opinion that, while not completely without merits, this approach runs the risk of incentivizing the selection of measures that achieve results on the short run, even when more cost-effective measures with a slightly longer realization time are available. This could be harmful to the effectiveness of a potential SCF. We therefore consider it prudent to discuss alterations to the SCF that would incentive Member States to select measures with a longer realization time.

Finally, any possible SCF financed under the 2021-2027 MFF should not preempt the 2028-2034 MFF, meaning dates in the proposal referencing to the latter timeframe should be removed.

Delegation and entry into force – Articles 25 and 26

The current proposal only considers a single delegated responsibility, which is the setting of indicators. As mentioned, the Netherlands is of the opinion that such indicators should be included in an annex. Therefore, there is no need for Article 25 and it can be deleted. Article 26 should consider judicially correct wording that ensures a potential SCF is only brought into application in the case of the application of the ETS-BRT.

Article suggestions

Article 9

Budget

3. The amounts referred to in paragraphs 1 and 2 may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required for the management of the Fund and the achievement of its objectives, in particular studies, meetings of experts, consultation of stakeholders, information and communication actions, including inclusive outreach actions, and corporate communication of the political priorities of the Union, insofar as they are related to the objectives of this Regulation, expenses linked to IT networks focusing on information processing and exchange, corporate information technology tools, and all other technical and administrative assistance expenses incurred by the Commission for the management of the Fund. Expenses may also cover the costs of other supporting activities such as quality control and monitoring of projects on the ground and the costs of peer counselling and experts for the assessment and implementation of the eligible actions. **The expenses listed in this article and funded through the resources of the Social Climate Fund shall not exceed X%.**

Explanation

It should not be possible to fund the expenses listed in 9(3) without limit, as this would not incentivize effective and efficient design and implementation of the Social Climate Plans. As of yet we do not have a set percentage for this limit, however, and are open to discussion on this.

Article 10

Resources from shared management programmes and use of resources

1. Resources allocated to Member States under shared management may, at their request, be transferred to the Fund subject to the conditions set out in the relevant provisions of Regulation (EU) 2021/1060. The Commission shall implement those resources directly in accordance with Article 62(1), first subparagraph, point (a) of Regulation (EU, Euratom) 2018/1046. Those resources shall be used exclusively for the benefit of the Member State concerned.
2. Member States may entrust the managing authorities of the European Social Fund Plus (ESF+) established by Regulation (EU) 2021/1057 and of the cohesion policy operational programmes under Regulation (EU) 2021/1058 with the implementation of measures and investments benefitting from this Fund, where applicable in view of the synergies with those Union funds and in conformity with the objectives of the Fund. Member States shall state their intention to entrust those authorities in their Plans.
3. Member States may include in their Plan, as part of the estimated total costs, the payments for additional technical support pursuant to Article 7 of Regulation (EU) 2021/240 and the amount of the cash contribution for the purpose of the Member State compartment pursuant to the relevant provisions of Regulation (EU) 2021/523. Those costs shall not exceed 4 % of the financial total allocation for the Plan, and the relevant measures, as set out in the Plan, shall comply with this Regulation.

Article 11

Implementation

The Fund shall be implemented by the Commission in direct management in accordance with the relevant rules adopted pursuant to Article 322 TFEU, in particular Regulation (EU, Euratom) 2018/1046 and Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council⁵⁹.

Explanation

Support this article

Article 18

Commitment of the financial allocation

1. After the Commission has adopted a decision as referred to in Article 16, it shall in

due time conclude an agreement with the Member State concerned constituting an individual legal commitment within the meaning of Regulation (EU, Euratom) 2018/1046 covering the period 2025-2027. That agreement may be concluded at the earliest one year before the year of the start of the auctions under Chapter IVa of Directive 2003/87/EC.

3. Budgetary commitments may be based on global commitments and, where appropriate, may be broken down into annual instalments spread over several years.

When Member States and the Commission opt for payment in annual installments, such installments may never exceed the installments of later years.

Explanation

This wording disincentivizes the design of Social Climate Plans that opt for measures that deliver results in the very short run, over measures that deliver the best results over the entire length of the SCF.

Article 19

Rules on payments, suspension and termination of agreements regarding financial allocations

1. Payments of financial allocations to the Member State concerned under this Article shall be made upon completion of the relevant agreed milestones and targets indicated in the Plan as approved in accordance with Article 16 and subject to available funding. Upon such completion, the Member State concerned shall submit to the Commission a duly justified request for payment of the financial allocation. Such requests for payment shall be submitted by the Member States to the Commission once or twice a year by 31 July.

2. The Commission shall assess without undue delay, and at the latest within two months of receiving the request, whether the relevant milestones and targets set out in the Commission decision referred to in Article 16 have been satisfactorily fulfilled. The satisfactory fulfilment of milestones and targets shall presuppose that measures related to previously satisfactorily fulfilled milestones and targets have not been reversed by the Member State concerned. The Commission may be assisted by experts.

3. Where the Commission makes a positive assessment, it shall adopt without undue delay **and at the latest within one month** a decision authorising the disbursement of the financial allocation in

accordance with Regulation (EU, Euratom) 2018/1046.

4. Where, as a result of the assessment referred to in paragraph 3, the Commission establishes that the milestones and targets set out in the Commission decision referred to in Article 16 have not been satisfactorily fulfilled, the payment of all or part of the financial allocation shall be suspended. The Member State concerned may present its observations within one month of the communication of the Commission's assessment.

The suspension shall only be lifted where the milestones and targets have been satisfactorily fulfilled as set out in the Commission decision referred to in Article 16.

5. By way of derogation from Article 116(2) of Regulation (EU, Euratom) 2018/1046, the payment deadline shall start running from the date of the communication of the decision authorising the disbursement to the Member State concerned pursuant to paragraph 3 of this Article, or from the date of the communication of the lifting of a suspension pursuant to the second subparagraph of paragraph 4 of this Article.

6. Where the milestones and targets have not been satisfactorily fulfilled within a period of six months from the suspension, the Commission shall reduce the amount of the financial allocation proportionately after having given the Member State concerned the possibility to present its observations within two months from the communication of its conclusions.

7. Where, within 12 months of the date of the conclusion of relevant agreements referred to in Article 18, no tangible progress has been made in respect of any relevant milestones and targets by the Member State concerned, the Commission shall terminate the relevant agreements referred to in Article 18 and shall de-commit the amount of the financial allocation. The Commission shall take a decision on the termination of agreements referred to in Article 18 after having given the Member State concerned the possibility to present its observations within a period of two months of the communication of its assessment as to whether no tangible progress has been made.

8. Where Member States' allocations are reduced or terminated, the amount reduced or terminated shall be deducted from the amounts referred to in Article 9(1) and 9(2).

Explanation

For the SCF to retain its performance based nature, it needs clear incentives for achieving its set out milestones and objectives. This should be clarified in Article 19. Where the maximum allocations of a Member State is reduced or terminated, it should not lead to reallocation and administratively intensive recalculation of Social Climate Plans for other Member States.

Article 22

Information, communication and publicity

1. Member States shall make the data referred to in Article 20(2), point (d), (i), (ii) and (iv) of this Regulation publicly available and up to date in a single website in open, machine-readable formats, as set out in Article 5(1) of Directive (EU) 2019/1024 of the European Parliament and of the Council⁶², which shall allow data to be sorted, searched, extracted, compared and reused. The information referred to in Article 20(2), point (d), (i) and (ii) of this Regulation shall not be published in cases referred to in Article 38(3) of Regulation (EU, Euratom) 2018/1046 or if the direct income support paid is less than EUR 15 000.
2. The recipients of Union funding shall acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the actions and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public.
3. The Commission shall implement information and communication actions relating to the Fund, to actions taken pursuant to this Regulation and to the results obtained, including, where appropriate and with the agreement of the national authorities, through joint communication activities with the national authorities and the representation offices of the European Parliament and of the Commission in the Member State concerned.

Explanation

Support for Article 22, with the caveat that 22(2) could provide further clarity on the requirements placed on natural persons, especially regarding the provision of information to "multiple audiences".

Article 23

Monitoring of implementation

1. Each Member State concerned shall, on a biennial basis, report to the Commission on the implementation of its Plan as part of its integrated national energy and climate progress report pursuant to Article 17 of Regulation (EU) 2018/1999 and in accordance with Article 28 thereof. The Member States concerned shall include in their progress report:
 - (a) **when applicable** detailed quantitative information on the number of households in energy poverty;

- (b) when applicable, detailed information on progress towards the national indicative objective to reduce the number of households in energy poverty;
- (c) detailed information on the results of the measures and investments, included in its Plan;
- (d) information reported on greenhouse gas policies and measures and on projections as well as on energy poverty provided under Article 18 and Article 24 of Regulation (EU) 2018/1999;

(x) detailed qualitative information on the greenhouse gas emission reduction of the measures and policies and their contribution to reaching the 2030 and 2050 climate targets.

(e) information reported under the long-term buildings renovation strategies pursuant to Directive 2010/31/EU;

(f) ~~in 2027~~, an assessment of the Plan referred to in Article 17(5) in view of the actual direct effects of the emission trading system for buildings and road transport established pursuant to Chapter IVa of Directive 2003/087/EC;

(g) information on changes of its Plan in accordance with Article 17.

2. The Commission shall monitor the implementation of the Fund and measure the achievement of its objectives. The monitoring of implementation shall be targeted and proportionate to the activities carried out under the Fund.

3. The performance reporting system of the Commission shall ensure that data for monitoring the implementation of the activities and results are collected efficiently, effectively and in a timely manner. To that end, proportionate reporting requirements shall be imposed on recipients of Union funding.

4. ~~The Commission shall be empowered to adopt delegated acts in accordance with Article 25 to supplement this Regulation in order to set out the~~ **The** common indicators to be used for reporting on the progress and for the purpose of monitoring and evaluation of the Fund towards the achievement of the objectives set out in Article 1 **shall be established in Annex X of this Regulation.**

Explanation

Broad support for this article. 23(1)a-g could be used to inform the indicators utilized in the annex. For the Netherlands, inclusion of requirement akin to 23(1)d is crucial.

Article 24

Evaluation and review of the Fund

1. By 1 July 2028, the Commission shall provide the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions with an evaluation report on the implementation and functioning of the Fund.

2. By 31 December 2033, the Commission shall provide the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions with an independent ex post evaluation report.

3. The evaluation report shall, in particular, assess to which extent the objectives of the Fund laid down in Article 1 have been achieved, the efficiency of the use of the resources and the Union added value. It shall consider the continued relevance of all objectives and actions set out in Article 6 in light of the impact on greenhouse gas emissions from the emission trading system for buildings and road transport pursuant to Chapter IVa of Directive 2003/87/EC and from the national measures taken to meet the binding annual greenhouse gas emission reductions by Member States pursuant to Regulation (EU) 2018/842 of the European Parliament and of the Council⁶³. It shall also consider the continued relevance of the financial envelope of the Fund in relation to possible developments concerning the auctioning of allowances under the emission trading system for buildings and road transport pursuant to Chapter IVa of Directive 2003/87/EC and other relevant considerations.

If deemed appropriate, the financial envelope provided under the fund can be reduced.

4. Where appropriate, the evaluation report shall be accompanied by a proposal for amendments to this Regulation.

5. The ex post evaluation report shall consist of a global assessment of the Fund and shall include information on its impact.

Explanation

The midterm evaluation should not be used as a pretext to increase the financial envelope of the fund. Furthermore, all dates should be brought in line so as not to pre-empt the negotiations on the 2028-2034 MFF.

Article 25

Exercise of delegation

~~1. The power to adopt delegated acts shall be conferred on the Commission subject to the conditions laid down in this Article.~~

~~2. The power to adopt delegated acts referred to in Article 23(4) shall be conferred on the Commission for an indeterminate period of time.~~

~~3. The delegations of power referred to in Article 23(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European~~

Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 23(4) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Explanation

Should the indicators be included in an annex, Article 25 is superfluous.

Article 26

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from the date by which the first Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Directive (EU) [yyyy/nnn] of the European Parliament and the Council⁶⁴ amending Directive 2003/87/EC as regards Chapter IVa of Directive 2003/87/EC

Explanation

A suggestion to ensure uniform European implementation while precluding entry into application of an SCF without an ETS BRT.

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