

AECM's comments on 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 (CPR) (COM (2018) 375) and on the proposal for a Regulation on the European Regional Development Fund and on the Cohesion Fund COM/2018/372 – 2018/0197 (COD)

Brussels, 28/11/2018



aecm
EUROPEAN ASSOCIATION OF GUARANTEE INSTITUTIONS

Register ID number: 67611102869-33

Introductory remarks

The European Association of Guarantee Institutions (AECM) welcomes the Commission's proposal for a Regulation laying down common provisions (CPR) on the European Structural and Investment Funds (ESIF) as well as for a Regulation the European Regional Development Fund (ERDF) and on the Cohesion Fund (CF) for the programming period 2021–2027 and appreciates its ambitious commitment to create a policy for all regions – with no region left behind.

AECM considers that cohesion policy is a cornerstone of the EU's policies thus, the economic, social and territorial cohesion must continue to be at the core of the European Union Strategy and it needs to be ensured that necessary capacities are mobilized and focused on implementing the strategy.

Therefore, with the following comments AECM would like to contribute to the ongoing negotiations between the European Parliament, the Council of the European Union and the European Commission (so called triologue negotiations) on the CPR as well as on the ERDF and the CF.

This paper consists of the following parts:

- I. Remarks on CPR COM (2018) 375
- II. Remarks on ERDF and CF COM(2018) 372
- III. Information on AECM's members

I. Remarks on CPR

Main position

AECM appreciates in particular the following elements put forward in the aforementioned draft CPR:

- **The increased flexibility**

AECM welcomes the Commission's proposal on both, voluntary contributions directly to instruments managed at EU level, as mentioned in art. 10 of the draft CPR as well as the possibility of transfer of resources from any of the funds to any other fund under shared management or to any instrument under direct or indirect management as mentioned in art. 21 of the proposed CPR. It needs to be stressed that these options should remain voluntary. If a Member State does not see any need to use these possibilities, no detriment whatsoever may arise.

Moreover, AECM fully agrees with the proposal regarding the combination of financial instruments with grants in a single operation as laid down in art. 52 (5) of the suggested CPR. Such combined operations should be possible in the most practice-oriented way.

- **The new criteria for the allocation of funding**

AECM fully supports the new allocation method for the funding of the regions, i.e. that in addition to the criteria of GDP per capita, also factors such as unemployment (notably youth

unemployment), low education level, climate change and integration of migrants are taken into account. These criteria reflect better regional disparities and ensure a fair treatment for all.

However, in our point of view, some adjustments should be envisaged to make ESIF management as simple and efficient as possible.

General proposals

1. AECM regrets to see that the budget of cohesion policy has been reduced by 10% in real terms given that cohesion is the area where the EU can demonstrate its relevance to and for its citizens. Therefore, AECM considers that ESIF should be allocated a budget at least similar to the pre-2020 period.
2. Furthermore, AECM is concerned about the Commission's proposal to uncouple rural development from cohesion policy, from the CPR and from thematic objectives that currently align all five European structural and investment funds. This concern is further enhanced by the Commission's current proposals (both on the MFF and on the CAP) for a significant reduction of rural development funds. To illustrate, the proposal for the 2021-2027 CAP allocations amounts to EUR 324 billion for agricultural policy measures. Nearly 80% of this amount is allocated to direct payments to farmers and agricultural market measures under the European Agricultural Guarantee Fund (EAGF), and only the remaining part supports rural development under EAFRD, namely EUR 70 billion. In our point of view, this would lead to severe cuts in the revenues of the beneficiaries in rural areas and it would concern most agricultural undertakings. Therefore, AECM kindly asks the decision-takers to find ways to reintegrate the European Agricultural Fund for Rural Development into the rulebook and ensure a complementarity between Structural funds and EAFRD.
3. Further, AECM calls on the decision-takers to reconsider the proposed EU co-financing rates. The reduced EU co-financing rates as provided in the current draft of the CPR impede the realization of projects. There is the risk that reduced co-financing rates would favor the implementation of only large projects. As such, AECM proposes to maintain the co-financing rates at the level of the current funding period, namely: 85% for less developed regions, 60% for transition regions and 50% for more developed regions.
4. Besides, AECM is of the opinion that compliance between ESIF rules and state aid rules should be laid down in the proposed CPR. Based on the experience gained during the current 2014-2020 period, the interaction between ESIF rules and state aid rules appears to be problematic. In order to facilitate compliance between these two sets of rules and to ensure a level playing field, AECM proposes to the European Commission to adapt the state aid rules accordingly in order to allow for an easy and fluid combination ensuring legal certainty.

Proposals regarding programming and monitoring framework

1. Article 7 of the draft CPR mentions that the Member State shall submit the Partnership Agreement to the Commission before or at the same time as the submission of the first

programme, without however fixing a deadline for the submission of the aforementioned partnership agreement. Further, art. 16 establishes a direct link between Partnership Agreement and submission of programmes, meaning that the requirement stipulated in art. 16 for submission of programmes within a further three months is of limited use. AECM is of the opinion that in order to ensure an immediate implementation of programmes or at least close to the start of the programme period, the Member States should timely submit their programmes. Thus, we suggest setting in art. 7 of the draft CPR a mandatory deadline for the submission of partnership agreements.

2. The draft CPR provisions are not sufficiently clear about who is responsible for the monitoring of the amount of ERDF, the ESF+, the Cohesion Fund and the EMFF to be contributed to InvestEU and delivered through budgetary guarantees. Art. 35 (2) (d) just mentions that the monitoring committee shall approve any proposal by the managing authority for the amendment of a programme including for transfers in accordance with art. 19 (5) and art. 21. To this end, AECM suggests clarifying the arrangements for monitoring the programme implementation in case of transfer of funds towards InvestEU, in particular the role of the managing authorities and the monitoring committee in view of assuring a proper spending of the resources.
3. Regarding the transmission of data to the European Commission mentioned in the art. 37 of the draft CPR AECM considers that the Commission's proposal to transmit data every two months would increase significantly the management load for the financial instruments. In the case of financial instruments, a yearly reporting suits better the rhythm of investments. Accordingly, it should be stipulated that the managing authorities shall transmit cumulative data for each programme electronically to the European Commission by 30 November of each year.

Proposals to simplify the management of financial instruments

1. Referring to the definition of 'leverage effect' mentioned in the art. 2 (22) of the draft CPR, AECM suggests to define it as the 'amount of resources provided by and out of the programme to final recipients divided by the amount of the contribution from the funds'. In our point of view, this definition takes into account self-financing and private co-financing and provides a more accurate measure of funds mobilized in a project thanks to the leverage of ESIF.
2. AECM fully agrees with the provision laid down in art. 52 (2) according to which financial instruments shall provide support to final recipients only for investments expected to be financially viable and which do not find sufficient funding from market sources. Moreover, we fully agree with the provision of the recital 41, where is mentioned that financial instruments should not be used to support refinancing activities, such as replacing existing loan agreements or other forms of financing for investments which have already been physically completed or fully implemented at the date of the investment decision. Yet, AECM considers that the CPR is not precise enough regarding financial support possibilities to companies. Therefore, art. 52 (2) of the draft CPR shall include a provision stipulating that 'where financial instruments support financing to

enterprises, including SMEs, such support may include investment in both tangible and intangible assets as well as working capital, within the limits set by the applicable Union state aid rules and with a view to stimulating the private sector as a supplier of funding to enterprises. It must also include the costs of transfer of proprietary rights in enterprises’.

3. The draft CPR does not include requirements regarding the selection of financial intermediaries. The current provisions stipulate only that ‘in full respect of the applicable State aid and public procurement rules already clarified during the 2014-2020 programming period, the managing authorities should have the possibility to decide on the most appropriate implementation options for financial instruments in order to address the specific needs of target regions’ (recital 44) and that the managing authorities ‘shall select the body implementing a financial instrument’ (art. 53 (2)). For reason of legal certainty, AECM proposes to introduce in the art. 52 the requirement for selection of financial intermediaries through an open, transparent and non-discriminatory procedure and providing further clarifications on the types of the bodies that can be entrusted with the implementation of financial instruments and the requirements they have to fulfill.
4. Referring to the ex-ante assessment, AECM welcomes the possibility given to the Members States to update or use the ex-ante assessment from the current programming period, as mentioned in art. 52 (3) (d). However, the draft CAP does not require a financial instrument’s ex-ante assessment to be based on market gap analysis. AECM considers that the absence of such analysis could lead to the risks that financial instruments are larger than they need to be and private and public financing might be crowded out. To this end, AECM requests that the ex-ante assessment shall include in art. 53 (3) at least the following elements: an analysis of market failures, of sub-optimal investment situations, and of investment needs for policy areas and thematic objectives or investment priorities.
5. Regarding the refundable feature of financial instruments, their management ways must be flexible and proportionate. To this end, AECM proposes to make explicit in the texts what is expected from financial intermediaries to justify the use of funds i.e. verification of the eligibility of the recipient and its project before the funding. Ex-post processes of verification, audit and monitoring laid down in the regulation proposal provide an additional guarantee regarding the sound use of funds. Thus, AECM proposes to include in the art. 53 (8) a specification according to which evidence of the financial instruments use is limited to the ex-ante verification of the eligibility of the recipient and its project by the financial intermediary in light of conditions of the financial instrument.
6. As far as interest and other gains generated by support from the funds to financial instruments are concerned, AECM considers that art. 54 should also envisage that financial charges implied by the accounts management are eligible costs for a contribution from the funds, because in case of negative rates, as currently the case, accounts management induces financial costs for financial intermediaries. Moreover, with the payment rules to financial intermediaries laid down in the current CPR, the

available treasury for some instruments, such as loans for innovation for example, is too low to be remunerated regarding quick disbursements of such loans.

7. Concerning the specific eligibility rules for financial instruments, the European Commission proposes in the art. 62 (3) to establish management fees at the fixed rate of 5%, with no regard to the financial instrument category. In our point of view, this stipulation induces a risk of non-sustainability of existing instruments and insecurity in the management of new instruments. To this end, a provision should be included stipulating for guarantees that the aggregate amount of management costs and fees over the eligibility period laid down in the Regulation (EU) No 1303/2013 shall not exceed the following limits:
 - a. for a financial instrument providing guarantees, 10 % of the total amount of programme contributions paid to the financial instrument;
 - b. for a financial instrument providing grants, interest rate subsidies or guarantee fee subsidies, 6 % of the total amount of programme contributions paid to the financial instrument.

Proposals to management and control system

8. AECM considers that the Commission's proposal to make systematic controls at the level of banks in the context of guarantee funds as mentioned in the art. 75 is disproportionate and may be counter-productive. We are of the opinion that it is necessary to undertake controls at the level of the body that implements financial instruments. Therefore, AECM proposes for the ongoing discussions to include a provision that would stipulate that in the context of guarantee funds, the bodies responsible for the audit of programmes may conduct verifications or audits of the bodies providing new underlying loans only when one or more of the following situations occur:
 - a. supporting documents, providing evidence of the support from the financial instrument to final recipients, are not available at the level of the managing authority or at the level of the bodies that implement financial instruments;
 - b. there is evidence that the documents available at the level of the managing authority or at the level of the bodies that implement financial instruments do not represent a true and accurate record of the support provided.
9. Concerning the availability of documents, AECM fully agrees with the proposal laid down in the art. 76 which stipulates that it should be envisaged that the managing authority shall ensure that all supporting documents related to an operation supported by the funds are kept at the appropriate level for a five-year period from 31 December of the year in which the last payment by the managing authority to the beneficiary is made. Yet, it needs to be added that for the guarantee instrument the decisive moment is the settlement of default.
10. Besides, repayable advances are still not defined in the CPR. Since repayable advances are used in several Member States to support innovation projects in starting phase,

AECM kindly suggests to include a provision defining ‘repayable advances’ as a loan for a project which is paid in one or more instalments and the conditions for the reimbursement of which depend on the outcome of the project.

11. Regarding visibility, AECM sees room for improvement to better communicate the positive effects of the cohesion policy to the EU citizens.

II. Remarks on ERDF and CF

Main position

AECM appreciates in particular the following elements put forward in the aforementioned draft regulation:

- AECM fully agrees with the Commission's decision to simplify the rules for the 2021-2027 programming period and welcomes the fact that the European Regional Development Fund ERDF and Cohesion Fund (CF) are merged in one single regulation that sets out the applicable rules covering both funds. The new proposal for a regulation is shorter as the Common Provisions Regulation (CPR)¹ covers many common parts.
- We also appreciate the possibility given to the Member States to transfer up to 5% of their ERDF or CF resources to the envisaged InvestEU and also to transfer 5% of Fund resources from ERDF or/and CF to any other funds under shared management. It needs to be stressed that any transfer by the Member State should be decided with the involvement of the local and regional partners in line with the partnership principle and multilevel government.
- AECM highly appreciates the importance of combining different types of funds with the cohesion policy funds, especially financial instruments. We do consider that due to risk sharing and high leverage effects, guarantees create a larger market impact and consequently are a very useful tool to boost investment and thus increasing the benefits.
- Further, AECM positively notes that the support given by the ERDF should be limited to only micro, small and medium-sized enterprises (SMEs) and appreciates that such support can be extended to innovative companies irrespective of their dimension i.e. large enterprises as mentioned in the Recital 16 as well as art. 4 of the proposed regulation.

General proposals

- AECM regrets to see that the budget of the ERDF has been reduced by 12% and the CF by 46%. While acknowledging the Commission’s reasoning, we are of the opinion that Cohesion Policy is one of the most important EU policies contributing to reinforce economic, social and territorial cohesion by redressing the main regional imbalances in the Union. Therefore, AECM considers that to the ERDF and to the CF a budget which is at least similar to the pre-2020 period should be allocated.

¹ https://ec.europa.eu/commission/sites/beta-political/files/budget-may2018-common-provisions_en.pdf

- AECM is further concerned about the proposed EU co-financing rates. We do consider that the decrease in the European co-financing rates will impede the implementation of projects, especially by Member States facing budgetary difficulties. Thus, AECM proposes to maintain the co-financing rates at the level of the current funding period.
- AECM noticed with concern that the Commission's proposal provides for a new system of thematic concentration. Contrary to the provisions laid down in the current, 2014-2020 programming period, art. 3 of the draft regulation proposes to concentrate funding not at programme level based on GDP per capita but at national level based on gross national income. In practice this means that managing authorities or intermediate bodies at regional level will have to reach an agreement with their respective national governments in case they want to concentrate funding on areas which differ from those chosen at national level. This will especially concern the bigger countries and those with federal administrative structures and might lead to a situation where the ERDF operational programmes will not sufficiently reflect the specific needs of a target region within a particular Member State. Therefore, taking also into account the multilevel governance principle of cohesion policy, we suggest maintaining the concentration of the ERDF resources at programme level as it is currently done.

We cordially ask the decision-takers to consider our views, as outlined in this position paper during the ongoing legislative procedure. It goes without saying that AECM is happy to contribute further to this intense work and provide the European institutions with additional information that may be required.

III. Information on AECM's members:

The 48 members of the European Association of Guarantee Institutions (AECM) are operating in 28 countries in Europe. They are either private sector guarantee schemes or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. AECM's members operate with counter-guarantees from regional, national and European level. At the end of 2017 AECM's members had over EUR 126 billion of guarantee volume in portfolio, thereby granting guarantees to more than EUR 3 million SMEs.

European Association of Guarantee Institutions – AECM
Avenue d'Auderghem 22-28, bte. 10, B-1040 Brussels
Interest Representative Register ID number: 67611102869-33