Regulation (EU) 2020/558 of the European Parliament and of the Council of 23 April 2020 amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak

REGULATION (EU) 2020/558 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 April 2020

amending Regulations (EU) No 1301/2013 and (EU) No 1303/2013 as regards specific measures to provide exceptional flexibility for the use of the European Structural and Investments Funds in response to the COVID-19 outbreak

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 177, 178 and point (a) of Article 322(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors[(1)],

After consulting the European Economic and Social Committee,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Member States have been affected by the consequences of the COVID-19 outbreak in an unprecedented manner. The current public health crisis hampers growth in Member States, which in turn aggravates the serious liquidity shortages due to the sudden and significant increase in public investments needed in their healthcare systems and other sectors of their economies. That has created an exceptional situation which needs to be addressed with specific measures.

(2) In order to respond to the impact of the public health crisis, Regulations (EU) No 1301/2013[(3)] and (EU) No 1303/2013[(4)] of the European Parliament and of the Council have already been amended, by Regulation (EU) 2020/460 of the European Parliament and of the Council[(5)], to allow for more flexibility in the implementation of the programmes supported by the European Regional Development Fund (the 'ERDF'), the European Social Fund (the 'ESF') and the Cohesion Fund (collectively 'the Funds') and the European Maritime and Fisheries Fund (the 'EMFF'). In order to contribute to an effective response to the current public health crisis, the scope of support from the ERDF was considerably expanded.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/558 of the European Parliament and of the Council. (See end of Document for details)*

(3) However, the serious negative effects on Union economies and societies are becoming worse. It is therefore necessary to provide for exceptional additional flexibility to Member States to enable them to respond to this unprecedented public health crisis by enhancing the possibility to mobilise all non-utilised support from the Funds.

(4) With a view to alleviating the burden on public budgets responding to the public health crisis, Member States should be given the exceptional possibility to request, for cohesion policy programmes, a co-financing rate of 100 % to be applied for the accounting year 2020-2021, in accordance with budget appropriations and subject to available funding. Based on an assessment of the application of that exceptional co-financing rate, the Commission could propose an extension of this measure.

(5) In order to provide additional flexibility to Member States for the reallocation of resources with a view to providing tailor-made responses to the public health crisis, possibilities for financial transfers under the Investment for growth and jobs goal between the ERDF, the ESF and the Cohesion Fund should be introduced or enhanced. Furthermore, transfer possibilities between categories of regions should also be exceptionally increased for Member States given the widespread impact of the public health crisis, while respecting Treaty objectives for cohesion policy. Such transfers should not affect the resources under the European territorial cooperation goal, the additional allocations to outermost regions, support to the Youth Employment Initiative (YEI) or the Fund for European Aid to the Most Deprived.

(6) In order to enable Member States to deploy quickly available resources to respond to the COVID-19 outbreak and taking into account that, given the advanced stage of implementation of the 2014-2020 programming period, the reallocation of resources can only concern resources available for programming for the year 2020, it is justified to exempt, on an exceptional basis, Member States from the need to comply with thematic concentration requirements for the remainder of the programming period.

(7) In order to enable Member States to concentrate on the necessary response to the COVID#19 outbreak and to reduce administrative burdens, certain procedural requirements linked to programme implementation and audits should be simplified. In particular, Partnership Agreements should no longer be amended for the remainder of the programming period, whether to reflect prior changes in operational programmes or to introduce any other changes. The deadlines for the submission of the annual implementation reports for the year 2019 and for the transmission of the Commission's summary report based on those annual implementation reports should be postponed. As regards the Funds and the EMFF, an extended possibility for audit authorities to make use of a non-statistical sampling method should also be explicitly provided for in respect of the accounting year 2019-2020.

(8) It is appropriate to specify that eligibility of expenditure should be exceptionally allowed for completed or fully implemented operations that foster crisis response capacities in the context of the COVID-19 outbreak. It should be possible for such operations to be selected even before the necessary programme amendment is approved by the Commission. Specific arrangements for invoking the COVID-19 outbreak as a reason of *force majeure* in the context of decommitment should be provided.

(9) In order to reduce administrative burdens and delays in implementation where changes in financial instruments are necessary to provide for an effective response to a public health crisis, the review and update of the *ex ante* assessment and updated business plans or equivalent documents, as part of the supporting documents demonstrating that support provided was used for its intended purpose, should no longer be required for the remainder of the programming period. The possibilities for the support for working capital through financial instruments under the European Agricultural Fund for Rural Development (EAFRD) should be extended.

(10) In order to ensure that Member States can make full use of support from the Funds and the EMFF, additional flexibility should be provided for the calculation of the payment of the final balance at the end of the programming period.

(11) In order to facilitate the transfers authorised under this Regulation, the condition laid down in point (f) of Article 30(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[(6)] regarding use of appropriations for the same objective should not apply in respect of transfers proposed under this Regulation.

(12) In order to ensure consistency between the approach taken under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak and *de minimis* aid, on the one hand, and the conditions for providing support to undertakings in difficulty under the ERDF, on the other, Regulation (EU) No 1301/2013 should be amended to allow for the grant of support to such undertakings in those specific circumstances.

(13) Since the objectives of this Regulation, namely to respond to the impact of the public health crisis by introducing flexibility measures in the field of providing support from the European Structural and Investment Funds ('ESI Funds'), cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ('TEU'). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.

(14) Given the urgency of the situation related to the COVID-19 outbreak, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*.

(15) In view of the COVID-19 outbreak and the urgent need to address the associated public health crisis and its social and economic consequences, it was considered to be appropriate to provide for an exception to the eight-week period referred to in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community.

(16) Regulations (EU) No 1301/2013 and (EU) No 1303/2013 should therefore be amended accordingly,

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) 2020/558 of the European Parliament and of the Council. (See end of Document for details)*

HAVE ADOPTED THIS REGULATION:

Article 1

Amendment to Regulation (EU) No 1301/2013

In Article 3(3) of Regulation (EU) No 1301/2013, point (d) is replaced by the following:

(d) undertakings in difficulty as defined in Union State aid rules; undertakings receiving support complying with Temporary Framework for State aid measures[7] or Commission Regulations (EU) No 1407/2013[8], (EU) No 1408/2013[9] and (EU) No 717/2014[10] shall not be regarded as undertakings in difficulty for the purpose of this point;.

Article 2

Amendments to Regulation (EU) No 1303/2013

Regulation (EU) No 1303/2013 is amended as follows:

(1) in Part Two, Title II, the following Chapter is added:

CHAPTER V

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

Article 25a

Exceptional measures for the use of the ESI Funds in response to the COVID-19 outbreak

1 By way of derogation from Article 60(1) and the first and fourth subparagraphs of Article 120(3), at the request of a Member State, a co-financing rate of 100 % may be applied to expenditure declared in payment applications during the accounting year starting 1 July 2020 and ending 30 June 2021 for one or more priority axes in a programme supported by the ERDF, the ESF or the Cohesion Fund.

Requests for modification of the co-financing rate shall be submitted in accordance with the procedure for the amendment of programmes set out in Article 30 and shall be accompanied by a revised programme or programmes. The co-financing rate of 100 % shall apply only if the relevant amendment of the operational programme is approved by the Commission before the submission of the final application for an interim payment in accordance with Article 135(2).

Before submitting the first payment application for the accounting year starting 1 July 2021, Member States shall notify the table referred to in point (d)(ii) of Article 96(2) confirming the co-financing rate which was applicable during the accounting year ending 30 June 2020 for the priorities concerned by the temporary increase to 100 %.

2 In response to the COVID-19 outbreak, the resources available for programming for the year 2020 for the Investment for growth and jobs goal may, at