EU Regulation

EUROPEAN FUND FOR STRATEGIC INVESTMENTS (EFSI)

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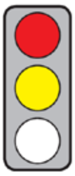
Centrum für Europäische Politik

KEY ISSUES

Objective of the Regulation: By creating a European Fund for Strategic Investments (EFSI), the Commission wants to mobilise investments in the EU amounting to € 315 billion.

Affected parties: Private and public investors.



Pro: It is necessary for EFSI investments to be compatible with the EU law on state aid. The "principles" for assessing them under the state aid law and the "simplified and accelerated" assessment of direct national participation in EFSI projects should not, however, be allowed to undermine the EU ban on state aid.

Contra: (1) The investment plan will not solve any of the problems that have resulted from the drop in investment in the EU and brings with it a significant risk of misallocation of resources.

(2) The "favourable" treatment of national contributions to the investment plan, in the context of the budgetary targets under the Stability and Growth Pact, undermines its credibility.

3) Of much greater importance than the promotion of investment is to ensure a stable and predictable regulatory framework in conjunction with the reduction of obstacles to investment.

CONTENT

Title

Proposal COM(2015) 10 of 13 January 2015 for a **Regulation** of the European Parliament and of the Council on the **European Fund for Strategic Investments** and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013

Brief Summary

► **Background**

– According to the Commission, investments have fallen in the EU by 15% since 2007. It believes the next few years will only see a partial recovery and acts on the assumption of an "investment gap". (Explanatory Memorandum, p. 2)
– The "Investment Plan for Europe" announced at the end of 2014 [COM(2014) 903, see cep**Input** 05|2014] will give rise to investments amounting to € 315 billion. It is based on three pillars (Recital 8):
  - mobilisation of additional funds for public and private investment,
  - channelling these funds into the real economy and
  - creating a stable framework for investment and removing barriers to investment.
– The Regulation implements the first two pillars. For this purpose, the Regulation creates (Recital 6):
  - a European Fund for Strategic Investments ('EFSI') based in the European Investment Bank (EIB),
  - an "EU guarantee" as security against losses incurred by the EIB from EFSI financing and investments,
  - an EU Guarantee Fund from which the EIB receives payments, in the event of a call on the guarantee, in order to compensate for these losses,
  - a European advisory hub for investment advice (EIAH) and
  - an investment project register ("project pipeline").
– Thus, investments amounting to € 315 billion will be mobilised between 2015 and 2017.

► **European Fund for Strategic Investments (EFSI)**

– A European Fund for Strategic Investments (EFSI) will be established which will be funded and administered by the European Investment Bank (EIB) (Art. 1 (1), Art. 2 (1)).
– The purpose of the EFSI is to mobilise public and private funding, by way of subsidies and guarantees, amounting to a total of € 315 billion, for real economy projects which would not otherwise be implemented.
– The EFSI will support projects with a "higher risk-return profile" than other investments supported by the EIB (Recital 15).
– The EIB plans to raise € 60.8 billion on the capital market by issuing bonds which it will use for investment and financing by the EFSI (Recital 18).
– As the Regulation only provides rudimentary details about the EFSI, the Commission must conclude an "agreement" with the EIB in order to establish the EFSI (Art. 1). This will regulate details such as
  - the level of the EIB's contribution to the EFSI (Recital 18) - planned at € 5 billion -,
  - the conditions for calling on and covering the EU guarantee (Art. 2 (1)).

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– The Member States can make financial contributions to the EFSI. For this they must accede to the "agreement" between the Commission and the EIB.
– If national promotional banks or private third parties wish to contribute, they require the consent of the parties to the agreement (Art. 1 (2)).

► **Decision-making structure of the EFSI**

– The EFSI has (Art. 3 (1), (4) and (5))
  - a "Steering Board" which determines the EFSI's strategic orientation, investment criteria and risk profile,
  - an "Investment Committee" which assesses projects on the basis of the investment criteria and decides on the application of the EU guarantee, and
  - a Managing Director who administers the EFSI and chairs the Investment Committee.
– The Steering Board consists of representatives of the contributing parties ("Members"). These are the EU and the EIB, and, where they make financial contributions, also the Member States, promotional banks and third parties. (Art. 3 (3))
– The voting rights of the Members are based on the level of their contribution. The Steering Board takes decisions "by consensus". Where Member States, national promotional banks or private third parties also contribute to the EFSI, decisions shall be taken by simple majority if a consensus is not possible. The Commission and the EIB each have a right of veto. (Art. 3 (2) and (3))
– The Investment Committee consists of six independent experts and the Managing Director (Art. 3 (5)).
– They are appointed for a "renewable" period of office of three years. Decisions are taken by simple majority. (Art. 3 (4) and (5))

► **EU Guarantee for the EIB**

– The EU grants the EIB a guarantee of € 16 billion ("EU Guarantee"). The EIB may use this for (Art. 4; Art. 5 (2))
  - EFSI financing and investment in the fields of transport, energy and digital infrastructure, education, health, research and development, innovation, renewable energy, energy and resource efficiency, the environment, natural resources, urban development and social fields,
  - the provision of capital from the EFSI for small and medium-sized enterprises (SMEs) and companies with up to 3000 employees (midcaps); in order to provide the capital, the EFSI reverts back to the services of the European Investment Fund (EIF), which is also based in the EIB.
  - EFSI "support" via the EIB in favour of investment platforms, which the Steering Board considers to be eligible for support, and in favour of national promotional banks.

► **EU Guarantee Fund**

– The EU establishes an EU Guarantee Fund from which the EIB receives payments when there is a call on the guarantee (Art. 8 (1)). This is the case, e.g. where an EFSI loan is not repaid due to the insolvency of the recipient.
– The EU Guarantee Fund has a target funding level of 50% of the EU Guarantee, i.e. € 8 billion. It will be reached by 2020. (Art. 8 (5), sub-para. (1))
– It will be met by the "gradual payment" of EU budgetary resources: € 500m in 2016, € 1bn in 2017, € 2bn in 2018 and payments in 2019 and 2020 of € 2.25bn each (Art. 8 (2), Explanatory Memorandum p. 6).
– Where there is a call on the guarantee prior to the target funding level being reached, additional endowments must be made to the Guarantee Fund by way of (Art. 8 (5) sub-para. 2, Explanatory Memorandum p. 5 and 6)
  - payments by the EIB from revenue from investments made by the EFSI.
  - income from the investment of funds from the EU Guarantee Fund and
  - payments by defaulting debtors of the EIB.
– As from 2019, the Commission may reduce or increase the target funding level of the Guarantee Fund by up to 10%, by way of delegated acts (Art. 8 (6)).

► **Contributions to the investment plan, particularly from Member States**

– Member States, their promotional banks and private third parties may contribute financially to the investment plan (Recitals 19 and 20).
– This is possible in particular for Member States by way of
  - contributions to the EFSI in the form of national guarantees or cash or
  - (direct) contributions to actual EFSI projects.
– The Commission wants to take a favourable position towards contributions to the EFSI by the Member States in the context of the Stability and Growth Pact (Explanatory Memorandum p. 7).

► **State aid assessments**

– Investments supported by the EFSI "should" comply with the state aid rules under European law. The Commission wants to develop principles by which to assess compliance with these rules. (Recital 22)
– The customary state aid assessment for (direct) contributions by Member States, to EFSI projects that have passed this state aid assessment, is to be replaced by a "simplified and accelerated" procedure in which the Commission simply examines whether the level is proportionate. (Recital 22)

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- **Advisory hub for investment advice (EIAH) and investment project register (Project-Pipeline)**
  - A "European Investment Advisory Hub (EIAH)" will be created within the EIB. The EU will make an additional maximum amount of € 20 m per year available for this until the end of 2020. Thereafter, the then applicable multi-annual EU financial frameworks will regulate its financing. (Art. 2 (2), sub-para. (3))
  - The EIAH will serve as (Art. 2 (2)):
    - an advisory service for investment project identification, preparation and development and
    - a single advisory hub for project financing within the EU.
  - The agreement between the Commission and the EIB will also contain details on the EIAH (Art. 2 (2)).
  - Commission, EIB and Member States will develop a "European Investment Project Pipeline" containing "current and potential future" investment projects in the EU. This does not pre-empt decisions of the Investment Committee. (Art. 9 (1))

Statement on Subsidiarity by the Commission

According to the Commission, investment can be supported better at EU level because it allows for the use of economies of scale and Member States are faced with varying budgetary challenges.

Policy Context

In July 2014, Jean-Claude Juncker announced in his "political guidelines" that he wanted to mobilise investment of up to € 300 billion. In November 2014, in the Communication "An Investment Plan for Europe", the Commission set itself the target of € 315 billion (see *cep**Input** 05/2014*). In December 2014, the European Council approved the Commission's initiative and called on it to set up the EFSI and the EIB.

Options for Influencing the Political Process

Leading Directorate General:	DG Economic and Financial Affairs
Leading Committee of the EP:	Economic and Monetary Affairs: Rapporteur Udo Bullmann (S&D, DE); Budgets: Rapporteur José Manuel Fernandes (EVP, PT)
Leading Federal Ministry:	Ministry of Finance
Leading Committee of the BT:	Finance
Decision-making mode in the Council:	Qualified majority (55% of Member States making up 65% of the EU population)

Formalities

Legislative competence:	Art. 172, Art. 173, Art. 175 (3), Art. 182 (1) TFEU
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (Ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

The Commission justifies its proposal by way of the investment level, which has fallen dramatically since 2007, and the resulting investment gap. **Net investment has** in fact **been falling in** most countries in **the EU** for several years. Firstly, this is due, particularly in the Eurozone, to falling net public investment - a direct consequence of the precarious budgetary situation of many Member States - and secondly, also to dwindling net private investment in a number of countries. **Three problems**, which vary in degree in the affected countries, **are responsible for this:** firstly, **the need to scale down excessive levels of private debt**; secondly, **the erosion of competitiveness** in the economies concerned, making many investments unprofitable; **and** thirdly, **the necessity for many banks to reduce their lending** because, due to the required balance sheet restructuring and stricter regulation, they lack the necessary equity. This limits the investment capability of companies. **The investment plan solves none of these problems.**
In fact, the Commission is actually presuming to know the "optimum investment quota" for the EU and thereby claims to have knowledge which is not available.
The investment plan involves a significant risk of a misallocation of resources because the EU investment guarantee may result in lenders contributing to projects which have not previously been financed because without a guarantee or other public support, they are unprofitable. Conversely, the EU guarantee could suppress other profitable investments which lenders would otherwise have undertaken. To the extent that this leads to deficits, the European tax payer will bear the loss by way of the EU guarantee.
In order to reduce the risk of misallocation and the risk of losses to the European tax payer, it is imperative that the positions on the Investment Committee be filled by independent experts. This will at least reduce the risk of political influence being exerted. However, the Investment Committee does not have the necessary level of knowledge to make economically efficient investment decisions either. The Committee must not allow itself to be influenced by the investment project pipeline, into which governments may also have placed "their own"

projects, otherwise there is a risk of a political race to obtain EFSI funds which will be intensified by the fact that the distribution of voting rights in the Steering Board will depend on financial contributions. The co-financing of unprofitable projects by the EFSI will thus become even more likely than it is already.

Additional costs are looming for the Member States apart from those arising where there is a call on the EU guarantee. The reason for this is the fact that the EIB - with the EU guarantee of € 16 billion as a back-up - is planning financing and investments of approx. € 61 billion. Liability for the resulting losses over and above € 16 billion will be borne by the EU Member States as the owners of the EIB.

The "favourable" treatment of national contributions to the investment plan, in the context of the budgetary targets under the Stability and Growth Pact, is a sign that the Commission wants to give the Member States greater scope in relation to budgetary policy. This step is irresponsible because compliance with the Pact is crucial for reducing the high level of government debt in the Member States. The proposed divergence **undermines the credibility of the Pact** and thus of the need for stable budget management on a permanent basis.

The fact that EFSI investments "should" be sufficient to comply with EU state aid law goes beyond the parameters of the TFEU. In view of the potential distortions of competition, however, this **is absolutely essential.** The important thing now is that the "principles" for assessing EFSI investments under the state aid law introduce a level of assessment which also corresponds to that applicable under the state aid law. All the more, so since there is a risk of a conflict of interests arising from the fact that the Commission is, on the one hand, the initiator of the EFSI and therefore supports it politically, and on the other hand, is also responsible for assessing compliance with the state aid law.

Of much greater importance than the promotion of investment using public funds would be to implement the third pillar of the "Investment Plan": to ensure a stable and predictable regulatory **framework in conjunction with the reduction of obstacles to investment.** If lenders fear changes in the rules and a resulting devaluation of investments, there will be no investment.

Legal Assessment

Legislative Competency

The Regulation is correctly based on the EU's competence to establish and develop trans-European networks (Art. 172 TFEU), to promote competitiveness (Art. 173 TFEU), to strengthen economic, social and territorial cohesion (Art. 175 (3) TFEU) and to establish a multiannual framework programme (Art. 182 (1) TFEU).

Subsidiarity

Unproblematic.

Proportionality with Respect to Member States

Unproblematic.

Compatibility with EU Law in other Respects

The ban on state aid under Art. 107 TFEU only applies to state aid from Member States and not to EU state aid because it is apparent from the wording that it only relates to state aid and aid from state resources (ECJ, Case C-341/95 of 14 July 1998, Bettati; ECJ, Joined Cases 213 to 215/81 of 13 October 1982, Vieh- und Fleischkontor and others). However, EU state aid must comply with EU principles of competition law (ECJ, Case 249/85 of 21 May 1987, Albako).

Investment and funding from the EFSI are thereby subject not to the EU ban on state aid but to the less stringent EU principles of competition law.

However, contributions to the EFSI by the Member States are governed by the EU ban on state aid due to the fact that these states are members of the EFSI Steering Board and therefore attributed to them.

(Direct) **contributions from Member States to** actual **EFSI projects are subject to the EU ban on state aid** as well. **The "simplified and accelerated" assessment procedure** for these contributions **will undermine the ban on state aid if the "principles" for assessing EFSI projects under the state aid law are not equivalent to the assessment level applicable under the ban on state aid** (Art. 107 TFEU).

Conclusion

The investment plan will not solve any of the problems that have resulted from the drop in net investment in the EU. It brings with it a significant risk of misallocation of resources. The "favourable" treatment of national contributions to the investment plan, in the context of the budgetary targets under the Stability and Growth Pact, undermines its credibility. It is absolutely essential for EFSI investments to be compatible with the EU state aid law. The EU ban on state aid applies to national contributions to actual EFSI projects. The "simplified and accelerated" assessment procedure for these contributions will undermine the ban on state aid if the "principles" for assessing EFSI projects under the state aid law are not equivalent to the assessment level applicable under the ban on state aid. Of greater importance than the promotion of investment is to ensure a stable and predictable regulatory framework in conjunction with the reduction of obstacles to investment.

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