



*Committee on Budgetary Control
The Chair*

19.2.2024

Mr David McAllister
Chair
Committee on Foreign Affairs
BRUSSELS

Mr Johan Van Overtveldt
Chair
Committee on Budgets
BRUSSELS

Subject: Opinion on the proposal for a regulation of the European Parliament and of the Council on establishing the Reform and Growth Facility for the Western Balkans (COM(2023)0692 – C9-0408/2023 – 2023/0397(COD))

Dear Chairs,

Under the procedure referred to above, the Committee on Budgetary Control has been asked to submit an opinion to the Committee on Foreign Affairs and the Committee on Budgets. At its meeting of 29 November 2023, the committee decided to submit an opinion through the regular procedure under rule 56 RoP. Due to changes in the timetable in February 2024, this was no longer possible and the procedure was changed to present you the CONT opinion in the form of a letter. The Committee considered the matter at its meeting of 22 February and adopted the opinion at that meeting.

The opinion consists of the following amendments, which, in accordance with the usual treatment of opinions under Rule 56, I kindly ask you to put to the vote during the vote on the report in your committees:

CONT 1

Recital 41 a (new)

To support the appropriate level of transparency that benefits the protection of the EU financial interests, the final recipient for support from the Facility shall be the natural person or entity that de facto receives the EU funding, being the contractor or sub-contractor in the case of contracting authority. Government ministries, agencies, or bodies that oversee, regulate, or administer the funds should only be considered final recipients when they are themselves involved in the execution and direct application of the work or service and bear the associated costs.

CONT 2

Recital 45 a (new)

The Commission should ensure that the financial interests of the Union are effectively protected under the Facility. To this end, an independent Audit Board should be set up to provide the Commission with information on possible mismanagement of funds and guarantee that a declaration of assurance is obtained through an independent external audit. The Audit Board should be subject to the reporting obligations to EPPO, in accordance with Article 24(1) of Regulation (EU) 2017/1939. Such information should be made available to OLAF and EPPO, when applicable, and where appropriate to the relevant Western Balkans Beneficiary authorities. The Commission, with the assistance of the Union delegations, should be entitled to perform checks on how the Western Balkans Beneficiary implement funds along the whole project life cycle. The Commission should be provided with sufficient funding and human resources to perform the audit and checks. The Audit Board should ensure regular dialogue and cooperation with the European Court of Auditors.

CONT 3

Recital 48

Furthermore, the beneficiaries should report the irregularities including fraud which have been the subject of a primary administrative or judicial finding, without delay, to the **Audit Board and the Commission** and keep **them** informed of the progress of administrative and legal **proceedings**. With the objective of alignment to good practices in Member States, this reporting should be done by electronic means, using the Irregularity Management System, established by the Commission.

CONT 4

Recital 48 a (new)

In order to measure progress on the objectives of the Facility, the Commission and the Beneficiary should establish a clear correlation between the amounts made available to the Beneficiary, in non-repayable financial support and loans and the costs incurred for the achievement of indicators.

CONT 5

Article 2 – paragraph 1 – point 8 a (new)

‘Final recipient’ means a contractor, sub-contractor, remunerated external expert or a person or entity receiving prizes or funds under the Facility.

CONT 6

Article 4 – paragraph 7

The Commission, in cooperation with the Member States and the Beneficiaries, shall contribute to the implementation of Union commitments to increased transparency and accountability in the delivery of assistance, *through* the implementation and reinforcement of internal control systems and anti-fraud policies, and by *compulsory* making information on the volume and allocation of assistance, *to the level of the final recipient*, available through web-based databases, and shall ensure that data is comparable and can be easily accessed, shared and published.

CONT 7

Article 5 – paragraph 1

Preconditions for the support under the Facility shall be that the Beneficiaries continue to uphold and respect effective democratic mechanisms, including a multi-party parliamentary system, and the rule of law, *also in view of threats to the EU Financial interests*, and guarantee respect for all human rights obligations, including the rights of persons belonging to minorities. Another pre-condition shall be that Serbia and Kosovo engage constructively in the normalisation of their relations with a view to fully implementing all their respective obligations stemming from the Agreement on the Path to Normalisation and its Implementation Annex as well as all past Dialogue Agreements and engage in negotiations on the Comprehensive Agreement on normalisation of relations.

CONT 8

Article 5 – paragraph 2

The Commission shall monitor the fulfilment of the preconditions set out in paragraph 1 before funds are released to Beneficiaries under the Facility and throughout the period of the support provided under the Facility taking duly into account the latest Enlargement Package. The Commission may adopt a decision concluding that some of these preconditions are not met, and in *such cases, shall* withhold the release of funds referred to in Article 21, irrespective of the fulfilment of payment conditions referred to in Article 16(3).

CONT 9

Article 6 – paragraph 6

The resources referred to in paragraph 2 point (b) may be used for technical and administrative assistance for the implementation of the Facility, such as, *impact assessments*, preparatory actions, monitoring, control, audit and evaluation activities, which are required

for the management of the Facility and the achievement of its objectives, in particular studies, meetings of experts, trainings, consultations with the Beneficiary authorities, conferences, 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, as well as all other expenditure at headquarters and Union delegations for the administrative and coordination support needed for the Facility. Finally, expenses may also cover the costs of other supporting **transparency** activities such as quality control and monitoring of projects or programmes on the ground and the costs of peer counselling and experts for the assessment and implementation of reforms and investments. ***In case of using resources for auditing purposes, conflict of interests between the entity performing the audit and other activities of that entity in the framework of the Facility, such as consulting or administrative and coordination support, quality control and monitoring of projects, shall be disclosed and prevented.***

CONT 10

Article 8 – paragraph 6 – introductory part

The eligibility rules and origin of supplies and materials referred to in paragraphs 1 and 3 and the nationality of the natural persons referred to in paragraph 4 may be restricted with regard to the nationality, geographical location or nature of the legal entities participating to award procedures as well as with regard to the geographical origin of supplies and materials, in the following cases, ***upon prior approval by the Audit Board:***

CONT 11

Article 9 – paragraph 3

Funding ***including pre-financing*** shall only be granted to the Beneficiaries after ***a positive assessment by the Commission of fulfilment of the preconditions in Article 5, and*** the respective Facility Agreements and the applicable loan agreements have entered into force.

CONT 12

Article 9 – paragraph 5 – point e a (new)

the recognition of the responsibilities of the Audit Board referred to in Article XX, and the modalities of the Western Balkans Beneficiaries' cooperation with it;

CONT 13

Article 9 – paragraph 5 – point f

the measures to prevent, detect, investigate and correct irregularities, fraud, corruption and conflicts of interest, and the obligation to notify the ***Audit Board, the Commission, OLAF and, where applicable, EPPO*** without delay of suspected or actual cases of irregularities, fraud, corruption, conflict of interests, ***and other illegal activities affecting the funds provided under the Facility*** and their follow-up, ***including when they concern the entity***

implementing the fund under the loan agreement;

CONT 14

Article 9 – paragraph 5 – point g

the obligations referred to in Articles 22 and 23, including precise rules and timeframe on collection of data by the Beneficiary and access for the Commission, *European Court of Auditors, OLAF and where applicable EPPO, including for information held by the entity implementing the fund under the loan agreement;*

CONT 15

Article 9 – paragraph 5 – point g a (new)

to provide a similar level of access to information and authority to carry out on-the-spot controls as the Commission and the Court of Auditors to the independent external auditor appointed by the Audit Board;

CONT 16

Article 12 – paragraph 1 – subparagraph 2

The fulfilment of the payment conditions shall trigger full or partial release of funds, depending on the degree of their completion *and fulfilment of the preconditions mentioned in Article 5.*

CONT 17

Article 13 – paragraph 1 – point a a (new)

measure related to negotiation chapter 32, particularly public finance management and internal control, as well as on fight against fraud, together with chapters 23 and 24, particularly when it comes to justice, corruption and organised crime and chapter 8, particularly on State aid control.

CONT 18

Article 13 – paragraph 1 – point d

for the reforms and investments, *a legally binding* timetable, and the envisaged payment conditions for release of funds in the form of *clear and measurable* qualitative and quantitative steps to be implemented by 31 August 2027 at the latest;

CONT 19

Article 13 – paragraph 1 – point e

the arrangements for the effective monitoring, reporting and evaluation of the Reform Agenda by the Beneficiary, *applying methodologies from the Better Regulation Guidelines,* including the relevant indicators set out in paragraph 2;

CONT 20

Article 13 – paragraph 1 – point f

an explanation of the Beneficiary's system to effectively prevent, detect and correct irregularities, fraud, corruption and conflicts of interests and to enforce State aid control rules, *and the proposed measures (reforms or investments) to address existing deficiencies;*

CONT 21

Article 13 – paragraph 2

The Reform Agendas shall be results-based and include indicators for assessing progress towards the achievement of the general and specific objectives set out in. These indicators shall be based, where appropriate and relevant, on internationally agreed indicators and those already available related to Beneficiaries' policies. Indicators shall also be coherent to the extent possible, with the key corporate indicators included in the Instrument for Pre-Accession assistance (IPA III) Results Framework, in the EFSD+ Results Measurement Framework and in the WBIF. *The indicators shall be defined Specific, Measurable, Achievable, Relevant, and Time-Bound. Each indicator will provide for quantitative and qualitative thresholds in order for the payment conditions to be considered as satisfactorily fulfilled. Indicators shall be included in the Decision referred to in Article 15.*

CONT 22

Article 14 – paragraph 4 a (new)

The Commission shall request the Beneficiary to review and/or modify the Reform Agendas to address the potential risks when the outcomes of its assessment reveals that some or all criteria as stated in Article 14 (3) are not met. Such a revision would be aligned with the approval process for the cross-border programmes in which the Western Balkan countries participate.

CONT 23

Article 15 – paragraph 3 – point e a (new)

the Commission's assessment of the preconditions as mentioned in Article 5;

CONT 24

Article 15 – paragraph 3 – point e b (new)

the arrangements for partial payments, indicating precisely the proportion of each relevant payment condition in each instalment scheduled to be released;

CONT 25

Article 15 – paragraph 3 – point e c (new)

how the reversal of measures and/or non-fulfilment of preconditions after completion of

the Facility shall be assessed;

CONT 26

Article 15 – paragraph 3 – point e d (new)

the obligation for the Beneficiary to lodge a financial guarantee, acceptable to the accounting officer of the Commission, of 5 % of the financial envelop of the Reform Agenda. The guarantee shall be enforceable on demand by the Commission when it assesses that, after the implementation period of the Facility has ended, the Beneficiary has reversed at least one measure in the Reform Agenda.

CONT 27

Article 20 – paragraph 1

Following the submission of the Reform Agenda to the Commission, the Beneficiary may request the release of a pre-financing of up to 7% of the total amount foreseen under this Facility in accordance with Article 6(4).

No pre-financing shall be made available in case of deficiencies in the Beneficiaries' control system that are addressed by specific measures in the Reform Agenda as described in Article 13 (f).

CONT 28

Article 20 – paragraph 2

The Commission may release the requested pre-financing after the adoption of its implementing decision referred to in Article 15 and the entry into force of the Facility Agreement and of the loan agreement referred to. The funds shall be released in accordance with Article 21(3) first sentence, and subject to the respect of the preconditions set out in Article 5 *which shall be explicitly assessed by the Commission prior to the implementing decision.*

CONT 29

Article 21 – paragraph 7

The Commission may reduce the amount of the non-repayable financial support, including by offsetting in line with Article 102 of Regulation (EU, Euratom) 2018/1046, or of the loan, in the event of identified cases of, or serious concerns in relation to, irregularities, fraud, corruption and conflicts of interests affecting the financial interests of the Union that have not been corrected by the Beneficiary, or a serious breach of an obligation resulting from the Facility Agreements or from the Loan Agreements, including on the basis of information provided by OLAF *and/or the European Court of Auditors.*

CONT 30

Article 22 – paragraph 1

In implementing the Facility, the Commission and the Beneficiaries shall take all the appropriate measures to protect the financial interests of the Union, taking into account the principle of proportionality and the specific conditions under which the Facility will operate, the preconditions set out in Article 5(1) and conditions set out in the specific Facility Agreements, in particular regarding the prevention, detection and correction of fraud, corruption, conflicts of interests and irregularities. Each Beneficiary shall commit to **implement (progressing towards deleted)** effective and efficient management and control systems and ensure that amounts wrongly paid or incorrectly used can be recovered.

CONT 31

Article 22 – paragraph 2 – introductory part

The Facility Agreement *and loan agreements* shall provide for the following obligations of the Beneficiary:

CONT 32

Article 22 – paragraph 2 – point d a (new)

insert all information related to project implementation, in particular concerning performance and financial implementation and final recipients in an interoperable information system provided by the Commission;

CONT 33

Article 22 – paragraph 2 – point d b (new)

to accompany a payment request by:

(i) a management declaration that the relevant payment conditions have been met with the support of the funds, 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 or will be managed in accordance with all applicable rules;

(ii) a list of all measures for the implementation of the Facility including a description of measures with the total amount of additional national funding, where applicable, of those measures and projects and indicating the amount of funds paid under the Facility and under other Union funds, including resources transferred from other Union programmes;

(iii) a summary of the audits carried out, including weaknesses identified and any corrective actions taken;

CONT 34

Article 22 – paragraph 2 – point d c (new)

for the purpose of audit, control and discharge,

(i) to maintain, and ensure access by the competent Union authorities including the discharge authority to:

- *detailed records on the implementation measures adopted, including information on national award procedures and contracts with intermediaries and recipients, indicating if applicable the total amount of any national co-financing, other national contributions, or other contributions under the Western Balkans Facility or under other Union funds; and*
- *evidence showing the correlation between the grants, non-repayable financial support or loans received and the costs incurred for the achievement of indicators.*

CONT 35

Article 22 – paragraph 4 a (new)

Regular update, at least once every three months, of the projects and investments funded under the Facility, including the final recipients, in a publicly accessible online register in accordance with the principle laid out in Article 4 (7). The Commission shall provide the Beneficiaries with a platform to publish this information and make the information available on an interactive map.

CONT 36

Article 22 a (new)

Audit Board

- 1. The Commission shall establish an Audit Board before the submission by the Western Balkans Beneficiaries of the first payment request.***
- 2. The Audit Board shall be composed of independent members appointed by the Commission. Representatives of Member States and other donors may be invited by the Commission to participate in the activities of the Audit Board.***
- 3. At least one-fifth of the Audit Board shall be composed of Beneficiaries' nationals, given they have proven high professional competence and integrity and have no personal or professional affiliation to Beneficiaries' authorities or officials as well as demonstrably independent international experts with a proven track record of understanding of the Beneficiaries' economy and political system.***
- 4. The Audit Board shall exercise its functions in complete objectivity and operate in compliance with best applicable international practices and standards. It shall act without prejudice to the powers of the Commission, OLAF, the Court of Auditors and, where applicable, the EPPO.***
- 5. The Audit Board shall appoint an independent external auditor that provides an annual statement of assurance on the declarations by the Beneficiaries' authorities that accompany a request for payment. It shall also approve the annual work plan of the independent external auditor.***
- 6. The Audit Board shall decide on recommendations to the Commission and the Beneficiaries' authorities on amounts to be recovered following the findings of the independent external auditor, and inform the Commission and the Beneficiaries'***

authorities of those recommendations.

7. The Audit Board shall ensure regular dialogue and cooperation with the European Court of Auditors.

8. In carrying out their duties, the Audit Board, its members and its staff shall neither seek nor take instructions from the Beneficiaries' governments or any institution, body, office or agency. Strong guarantees of independence shall apply for the selection of its staff, management and budget.

9. The Audit Board shall assist the Commission in fighting mismanagement of Union funding under the Facility and in particular fraud, corruption, conflict of interests and irregularities incurred in relation to any amount spent to achieve the objectives of the Facility.

10. For that purpose, the Audit Board shall regularly report to the Commission and the relevant committees of the European Parliament and the Council, and transmit to the Commission without delay any information it obtains or is made aware of, on any identified cases of, or serious concerns in relation to, mismanagement of public funding incurred in relation with any amount spent to achieve the objectives of the Facility, including its performance

In accordance with Article 24(1) of Regulation (EU) 2017/1939, the Audit Board shall report to the EPPO any criminal conduct in respect of which the latter could exercise its competence.

In accordance with Article 24(1) of Regulation (EU) 2017/1939, the Audit Board shall report to the EPPO any criminal conduct in respect of which the latter could exercise its competence.

In addition, the Audit Board shall adopt recommendations to the Beneficiaries on all cases where in its view competent Beneficiaries' authorities have not taken the necessary steps to prevent, detect and correct fraud, corruption, conflict of interests and irregularities that have affected or seriously risk affecting the sound financial management of the expenditure financed under the Facility and in all cases where it identifies weaknesses affecting the design and functioning of the control system put in place by the Beneficiaries' authorities. The Beneficiaries shall implement such recommendations without undue delay, or provide a justification on why it has not done so.

The reports of, and information from, the Audit Board shall also be sent to OLAF, and where applicable to the EPPO, and may be shared with the relevant Beneficiaries' authorities, especially in case they need to take steps to prevent, detect and correct fraud, corruption, conflict of interests and irregularities or any other illegal activity affecting the financial interests of the Union, including its performance, as well as to investigate and prosecute criminal offences affecting the financial interests of the Union.

11. The Audit Board shall have access to information, databases and registries required to carry out its tasks. The facility agreement referred to in Article 9 shall define rules and details for the access to relevant information by the Audit Board and the provision of relevant information by the Beneficiaries to the Audit Board

12. The Audit Board may assist the Commission in supporting the Beneficiaries with capacity building activities in the field of fight against mismanagement of public funding.

13. The functioning of the Audit Board shall be funded under Article 6 paragraph 2 (b) , including the funding for the appointed independent external auditor.

CONT 37

Article 23 – paragraph 2

The Beneficiaries shall report any irregularities, including fraud, which have been the subject of a primary administrative or judicial finding, without delay, to ***the Audit Board and*** the Commission and shall keep the Commission informed of the progress of any administrative and legal proceedings in relation to such irregularities. Such reporting shall be done by electronic means, using the Irregularity Management System, established by the Commission.

CONT 38

Article 23 – paragraph 3

The entities referred to in paragraph 2 shall maintain regular dialogue with the ***Audit Board, the*** European Court of Auditors, OLAF and, where appropriate, the EPPO.

CONT 39

Article 23 – paragraph 4

The Commission may carry out detailed systems reviews of the national budget implementation based on a risk-assessment and dialogue with National Audit Authorities, and issue recommendations for improvements in the systems, ***after having consulted with the Audit Board.***

CONT 40

Article 24 a (new)

WBF scoreboard

1. The Commission shall establish a WBF scoreboard (the ‘Scoreboard’), which shall display the progress of the implementation of the reform agendas of the beneficiaries in each of objectives referred to in Article 3. The Scoreboard shall constitute the performance reporting system of the Facility.

2. The Commission shall be empowered to adopt a delegated act in accordance with Article 26 to supplement this Regulation by defining the detailed elements of the Scoreboard with a view to displaying the progress of the implementation of the Facility as referred to in paragraph 1.

3. The Scoreboard shall be operational by December 2024 and shall be continuously updated by the Commission, as soon as performance information and other essential documents described in article 24a.4 become available. The Scoreboard shall be made

publicly available on a website or internet portal.

4. The Scoreboard shall also present the key documents, such as the Reform Agenda's, the Commission's assessments of the Reform Agenda's, the payment requests from the Beneficiaries, the Commission's assessment of the fulfilment of payment conditions, the implementing decision of the reform agenda's and the decisions authorising the release of funds.

5. The Scoreboard shall also present information on the final recipients of funds from this Facility.

Yours sincerely,

Monika Hohlmeier

Chair of the CONT Committee

Carlos Coelho

Rapporteur

Copy: Bernd Lange, Chair of the Conference of Committee Chairs, and Chair of the Committee on International Trade
Younous Omarjee, Chair of the Committee on Regional Development

**ANNEX: ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The rapporteur declares under his exclusive responsibility that he did not receive input from any entity or person to be mentioned in this Annex pursuant to Article 8 of Annex I to the Rules of Procedure.