CIFILE Journal of International Law (CJIL), *Vol. 1, No. 1, 17-21,* summer *2019*

European Fund for Strategic Investments, Does it need extra action to make a full success?

Gogić, Kristina[*]

Lawyer, Lecturer, Author, Law School University of Zagreb, Croatia. , kristinagogic1@gmail.com

DOI: 10.30489/CIFJ.2019.93909

ARTICLE INFO

Article history:
Received 2019-07-30
Accepted 2019-09-29
Online 2019-09-29

Keywords:
Strategic investments
Structural reforms
EU investment plan
Financing
Regulations
European Court of Auditors

ABSTRACT

European Fund for Strategic Investment (EFSI), (a regulation entered into force in 2015.) is one of the three pillars of the Investment Plan for Europe and it is the central pillar. It aims to tackle the lack of confidence and investment which resulted from the economic and financial crisis during which the level of investements dropped of by about 15%. The Investment Plan for Europe, has three objectives: to remove obstacles to investment; to provide visibility and technical assistance to investment projects and to make smarter use of financial resources.

The EFSI is an EU-budget guarantee providing the European Investment Bank Group (EIB) with a first loss protection. EIB Group is able to provide financing to higher-risk projects than they normally would and it is strategic partner of the European Commission (EC) in this Plan.

European Court of Auditors (ECA) made in 2019. a special report on the actual situation regarding investments project financed through the EFSI, for the period July 2015.-2018. ECA concluded that EFSI has been effective in raising finance to support substantial additional investment in European Union.

Introduction

The European Commission set out an approach based on three pillars in the circle of Economic Policy Priorities: 1. Structural reforms: to put Europe on a new growth path, 2.Fiscal Responsibility: to restore the soundness of public finances and cement financial stability, 3.Investment: to kick-start growth and sustain it over time.

According to this plan Member States (MS) with fiscal room for manoeuvre should invest more. MS with more limited fiscal space should prioritize investment and growth-related expenditure in their budgets, make better use of EU Funds and create an environment that is more conductive to investment by private actors. The Investment plan consists of three stands:

1. mobilizing finance for investment (ambition was to mobilize at least EUR 315 billion in additional public and private investment into the real economy) without creating new public debt (strong boost to strategic investment, better access to investment finance for Small and Medium Enterprises (SMEs) and mid-cap companies, strategic use of EU budget, better use of European Structural and Investment Funds). The proposed action was/is partly financed within the current Multi-Annual Financial Framework for the EU budget for 2014.-2020.
2. making finance reach the real economy, supporting projects and investments in key areas such as infrastructure, education, research and innovation: project pipeline preparation and selection, technical assistance at all levels (through the form of an investment advisory “Hub” with three audiences in mind: project promoters, investors and public authorities. The Hub is providing guidance on the most appropriate advisory support for a specific investor, whether it is delivered by the EIB-Group, National Promotional Banks (NPBs) or other international financial institutions), strong

cooperation between NPBs and EIB, follow up at global, EU, national and regional level, including outreach activities

3. Improved investment environment (predictability and quality of regulation, quality of national expenditure, tax systems and public administration, new sources of long-term financing for the economy, removing non-financial, regulatory barriers in key sectors within our Single Market. The Single Market is Europe's greatest structural reform achievement)

The stakeholders as a part of Plan are: MS, NPBs, regional authorities and private investors. To establish the EFSI, a guarantee, of 16 billion €, has been created under the EU budget to support the Fund. The EIB committed 5 billion €. MS, directly or through their NPBs or similar bodies, will have the opportunity to contribute to the Fund in the form of capital. Private investors can also join at the level of the Fund. The EFSI supports long term investment projects (16 bill € in the form of an EU guarantee could reach over 240 bill € of investments) in infrastructure (transport infrastructure, in a particular in industrial centres), education, research and innovation through ongoing EU programmes such as the Connecting Europe Facility (for infrastructure investments) and Horizon 2020 (for innovation and research) and small and medium enterprises (SMEs) and mid cap companies (5 bill € provided by EIB on its own risk without support from the EU budget; could reach 75 bill € of investments). The Fund is flexible since different regions have different needs in order to jump-start investments.

The duration of EFSI is extended in December 2017 by a new regulation so called "EFSI 2.0" until the end of 2020. Because of its success. Under the new EFSI, the Investment Committee is showing the reasons why they choose a project to receive support from the EU budget guarantee. A new Regulation also gives more detailed definition of what makes a project eligible for EFSI support, through the Article 5. so-called "additionality". [1] According to the new EFSI, at least 40% of it's infrastructure and innovation projects have to contribute to climate action in line with the Paris Agreement. The Paris Agreement enetered into force on November 4th, 2016. It is ratified by 185 of 195 parties which have adopted the first-ever universal, legally binding global climate deal; it is a bridge between today's policies and climate-neutrality; it sets out a global action plan to put the world on track to avoid dangerous climate change by limiting global warming to well below 2oC.

EFSI 2.0 explicitly targets new sectors too: sustainable agriculture, forestry, fisheries and aquaculture. It gives greater focus on smaller projects and more technical support at the local level.

Materials and Methods

Through the introduction was given short review of regulations, aim and intention of decision makers regarding EFSI and it's success. The question and the main point of this research is: does EFSI need extra action to make a full success? It has been seen that after two years of it's using an extra action was needed. And after other two years? This paper will give the possible answers on that a very important question.

One of the questions and uncertainties which still exist is the question of Brexit. According to the latest information United Kingdom can't leave EU without agreement which still isn't achieved. This question is very important for the future of EU and it's Capital Market Union because UK is/has the biggest and deepest market union in EU. And this question is very important for the agreement between UK and EU and we still don't know the exact time of this „divorce" and under which conditions. EC is still standing on the previous opinion that Brexit deal must be on the basis of the withdrowal agreement.

In January 2019 the European Court of Auditors has made a special report on extra actions needed for the full success of the EFSI. According to ECA despite a success of the EFSI, it still needs more improvements and additional support for the smaller MS. They found that some EFSI support just replaced other EIB and EU financing; part of the finance went to projects that could have used other sources of public or private finance, estimates of additional investment attracted by EFSI were sometimes overstated and most investments went to a few larger EU 15 MS with well-established NPBs[2] Why? The possible answer could be that larger EU MS with a longer democratic tradition and more experience in business without e.g communist past which some MS have and some of them became a new state through the war (e.g. Croatia). These countries need more support and more advising how to make a better project. And their NPBs aren't so successful as some larger EU 15 MS. In fact it is the main reason why the most investments went to a few larger EU 15 MS. And other very important reason arised from the EU Investment plan which said that MS with fiscal room for manoeuvre should invest more and MS with more limited fiscal space should prioritize investment and growth-related expenditure in their budgets, what is written in introduction of this manuscript. Because of the mentioned resaons the most investments went to a few larger EU 15 MS.

According to the ECA report NPBs generally consider Investment Platforms to be suitable for helping to finance smaller or riskier projects, combining financing from several sources and optimising the allocation of risk between various investors. The Investment Platforms are predominantly in some MS (e.g. France, Italy, Germany and Spain) which are the most developed with highly active and well-established NPBs and Institutions. Those are the countries which account for the biggest volume of the EFSI financing and the highest number of operations too. (e.g. in the end of the year 2017. EFSI financing for Investment platforms in million euro was: predominantly France 1200, Italy 383, Germany 300 and Spain 295). Except of the best NPBs the domination came because these countries are more developed because of the several reasons: larger teritory (geographically), more habitants and as it is written earlier because they don't have communist past what is a very big problem in the post communist countries. Some of them are EU MS and still don't have a Lustration Act which is the most important for the cleaner future of the post communist countries in

[1] Regulation on EFSI; www.eur-lex.europa.eu

[2] www.eca.europa.eu

general but in economy too (e.g. Croatia and Slovenia).[3] In all countries which have implemented lustration, economic growth was recorded what means that it is directly related. And these countries are slower in accepting and developing new ideas in general so in this part too. So that problem arised from the past of some EU countries and needs more time to solve it, maybe a few next generations for the total „clean up“. Germany is a very good example because it adopted the Stasi Records Act only two years after unification of Easter and Western Germany and today it is one of the most powerful countries in EU not only in investments. It could be a very good example for others which still didn't adopt that Law.

It is obvious that a few larger EU 15 MS had better projects and investors choosed them through the European Project Portal (EPP). EPP is the meeting place for the project promoters and investors. Project promoters have to be from the EU MS and investors could be world wide.These investments and projects are very important and very expensive; one of the conditions for the registration of the project to EPP is the value of the projects: must have a total cost of at least 10 million € (one project). So, the investors are looking for the best project into which will invest and expect the profit of it. That is logical that they will choose the best project for investing without a lot of emotion regarding country of origin or project promoter. That is reality in business. In fact a lot of money is involved and risk exists regarding choosing the best project. If a person is investor, what she/he will do? Choose the best project for the big and importanat investment. The recommendation to the post communist countries EU MS is to try to „clean up their yard first“ and after make complaints to the European Commission, if still will exist, which allegedly gave advantages to the larger EU 15 MS. They offered better projects, nobody didn't give them privileged status regarding which project someone should choose for investment. So that isn't any kind of discrimination.

It is important to say something about decisionmaking in general and for the concrete investment. How to make the best decision? Here is possible to use a dualistic approach in decisionmaking: if the interests of more than one person or group are affected, the several analysis might be necessary. It depends of a kind of project to which investor wants to invest. These projects are very big, important and expensive so several analysis might be necessary.

To understand better this article it is necessary to explain the role of the EFSI in the EU Investment Plan.The main regulation is The regulation (EU) 2015/1017 of the European Parliament and of the Council on the EFSI, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 and Regulation (EU) 2017/2396 amending regards the extension of the duration of the EFSI as well as the introduction of technical enhancements for that Fund and European Investments Advisory Hub.[4]

The role of the EFSI is to ensure enhanced risk-bearing capacity and mobilize extra investments, essencially from private sources, but also from public sources in specific sectors and areas.

The EFSI supports long term investment projects and small and medium enterprises (SMEs) and mid cap companies.[5]

Supported projects are generally open to all users, including competing operators, reasonable and appropriate conditions to avoid the creation of entry barriers to entry. To maximize the impact of such investments, the EC formulated a set of core principles, for the purpose of state-aid assessments, which a project has to meet to be eligible for support under the EFSI. If a project meets these criteria and receives support from the Fund, any national complementary support is assessed under a simplified and accelerated State Aid assessment whereby the only additional issue to be verified by the Commission is the proportionality of public support (absence of overcompensation).

As of the February 2019, approved EFSI financing amounted to €71.4 billion (of which 75 % through the EIB and 25 % through the EIF), and was projected to trigger a total investment of some €380 billion. Almost three quarters of the investment relates to operations in three of the sectors supported by EFSI: smaller companies (32 %); research, development and innovation (23 %); and energy (18 %). The EC concluded that EFSI has been successful in triggering significant additional investment in the EU and that its function remains relevant in the post-2020 programming period. The Commission has therefore put forward a proposal for a 2021-2027 InvestEU programme, a single investment scheme for internal Union policies that should build on EFSI and streamline the use of financial instruments supported by the EU budget. The proposed guarantee obligations for the new InvestEU Fund; part of the overall programme, amount to €38 billion with an investment target of more than €650 billion over seven years.[6]

It would be good to make a Risk Analysis as a part of Benefit Cost Analysis (BCA) for a mentioned period (post-2020 programming period). According to Regulation on EFSI the EFSI Agreement shell provide that the EFSI supports project which are, besides other criteria for the use of the EU guarantee, economically viable according to a Benefit Cost Analysis following Union standards, taking into account possible support from, and co-financing by, private and public partners to a project (Article 6. Paragraph 1. Point (a))[7] So EC used in this sense BCA and Risk Assessment which is very important too as a part of BCA. It is regulated by the same regulation in the Article 5. named Additionality. EC used BCA as a basis for decision-making on the co-financing of major projects included in operational programs (Ops) of the European Regional Development Fund (ERDF) and the Cohesion Fund. They made Strategy for Europe 2020. Through the guide to BCA of investment projects (2014.-2020.). The objective of guide reflects a specific requirements for the EC to offer practical guidance on major project appraisals, as embodied in the cohesion policy legislation for the noted period. Its main

[3] www.kristinagogic.com/en/columns „Models of Lustration in Post-Communist Countries“

[4] www.eur-lex.europa.eu

[5] www.kristinagogic.com PowerPoint presentation „EU Investment Plan“

[6] www.epthinktank.eu

[7] Regulation on EFSI; www.eur-lex.europa.eu

objective is to illustrate common principles and rules for application of the BCA approach into the practice of different sectors.

The EC is encouraging project promoters to assess the project's risk-exposure and vulnerability to climate change impacts to support resilience to climate changes in infrastructure investments. Weather disasters are very big problem today: heat waves (forest fires, damage to crops and impact on human health), extreme rainfalls, riverine flooding; storms and high winds (including damage to buildings, infrastructure, crops and forests); landslides; rising see levels; cold spells; freeze-thaw damage. Project makers can't know the exact costs of a damage which the weather could make. Risk assessment have to be included and it required to deal with the uncertainty that always permeates investment projects, including the risk that the adverse impacts of climate change may have on the project. So, Paris Agreement on climate changes is very important document and recommendations for any kind of projects including investments projects have to exist, especially in these strategic investment which are very important for any of the EU country. That doesn't mean that other projects are not very important too. But strategic investments projects are bigger projects which are usually more expensive and more complicated than smaller projects and that gives them more heaviness and more importance. Finally these projects and investments created and will create new jobs what is one of the main goals of the EU Investment Plan. That is directly connected.

Results and Discussion

As it is written in this manuscript the EC and the EIB consider that, as a result of the introduction of the EFSI, the majority of the other financial instruments were, in fact significantly reinforced, instead of being replaced. Furthermore, the scope of some of the existing financial instruments was refocused in order to reduce some of the observed overlaps with EFSI.[8] It is good that duration od the EFSI is extended as a result of it's success and that Commission has to put forward a proposal for a 2021-2027 Invest EUprogramme (post 2020 programming period).

It is necessary to educate more and to give more instructions to the smaller EU MS which offered projects which didn't find support or which aren't eligible for the use of the EU guarantee. It was wrong that some of these countries made complaints to the Commission because of allegedly giving advantages to the larger EU 15 MS in supporting of the projects, what is written in the previous text. Some of these countries have more problems on which deeper analysis has to be made to find where the real problem exists. In the Post Communist countries which didn't adopt Lustration Act a possible problem is located. And that problem isn't possible to solve „over night". Maybe they will need a few generations for the real and total change.

A recommendation to the EC and European Council is to consider the posssibility of putting into meeting criteria defined by the Treaty of European Union and the European Council for the countries with a perspective to join the EU accession treaty which have a Communist past, a question on necessity of adoption of the Act on Disclosure of Information (Lustration Act) because Human Rights were violated in these countries and there still exist some people which aren't punished for the crimes and are in public life of the country what is against to the EU values, policies and interest of the region. Croatia and Slovenia are bad examples; MS which have never adopted that Law and EU didn't think on that during negotiation on accession and finally both countries became EU MS and still the same problem exists. This is a critic to the EU bodies which were monitoring the progress of enlargement countries towards the EU and accession negotiations with Croatia and Slovenia. [9] In this a very important question they didn't do a very good job. So it is a good opportunity to try to correct this mistake in monitoring next potential candidates and candidates countries with the same problem. In the actual Croatian Government and previous Governemnets didn't want to discuss about that Law and adopt it. This is a huge problem for the EU too because their Memeber States don't respect EU values and policy. Through this case it is viable that EU is in fact mostly economic Union and the questions of Human Rights and crimes they left to the MS Governments which still have communist mentality after 30 years of existence. And they afraid to start with the lustration process which should bring a change. And the economy of these ex communist countries will be better after adoption of The Law on Disclosure of Information (Lustration Law). Maybe the decisionmakers in EU didn't make a good analysis of this problem and left it to the Governments of the Post Communist MS countries, what was the wrong decision in the case of Croatia and Slovenia.

Conclusion

During its first three years of implementation EFSI has successfully contributed to supporting investments and job creation in the EU what was it's main goal. It is good decision that the duration is extended until the end of 2020. and that the Commission has to put forward a proposal for the post programming period 2021-2027.

It is the time of a big uncertainty in EU and in the world: migrants crisis, climate changes, wars, etc. All these disasters are the cause of the recession: the prices are growing, wages are falling, companies become insolvent or bancrupt, employees remain without their jobs and are going to the streets and making protests. The final result: riots in the countries. Other uncertainty is the time when will UK leave EU and under which conditions what will make some changes in EFSI and EPP where project promoters from UK still can promote their projects and that will have the influence on the Capital Market Union which stability is one of the mail goals of the EU Investment Plan. So, this EU

[8] http://publications.europa.eu/webpub/eca/special-reports/efsi-3-2019/en/

[9] www.kristinagogic.com/en/columns „Communism will end with Lustration", „Hiding of informers"

Investment plan and EFSI as the main part of that plan are very important for job creation and other written in this manuscript.

References

- Regulation on EFSI; www.eur-lex.europa.eu

-www.eca.europa.eu

-www.kristinagogic.com/en/columns „Models of Lustration in Post Communist Countries“

- www.eur-lex.europa.eu

- www.kristinagogic.com PowerPoint presentation „EU Investment Plan“

- www.epthinktank.eu

- Regulation on EFSI; www.eur-lex.europa.eu

-http://publications.europa.eu/webpub/eca/special-reports/efsi-3-2019/en/

-www.kristinagogic.com/en/columns „Communism will end with Lustration“, „Hiding of informers“