



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 7 December 2011**

**18097/11**

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**Interinstitutional File:  
2011/0276 (COD)**

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<b>FSTR</b>	<b>90</b>
<b>FC</b>	<b>64</b>
<b>REGIO</b>	<b>157</b>
<b>SOC</b>	<b>1075</b>
<b>AGRISTR</b>	<b>82</b>
<b>PECHE</b>	<b>375</b>
<b>CADREFIN</b>	<b>177</b>

**REPORT**

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from: Presidency

to: Permanent Representatives Committee/Council

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No. Cion prop.: 15243/11 FSTR49 FC 39 REGIO 83 SOC 859 AGRISTR 56 PECHE 279  
CADREFIN 87 CODEC 1632  
15250/11 FC 40 REGIO 86 CADREFIN 90 CODEC 1635  
15251/11 REGIO 87 CADREFIN 91 CODEC 1636  
15249/11 FSTR 51 REGIO 85 CADREFIN 89 CODEC 1634  
15247/11 FSTR 50 SOC 860 REGIO 84 CADREFIN 88 CODEC 1633  
15253/11 REGIO 88 CADREFIN 92 FSTR 52 CODEC 1637

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Subject: Cohesion policy legislative package  
- Presidency report

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**I. INTRODUCTION**

1. On 10 October 2011 the Commission transmitted to the Council the legislative package for Cohesion Policy for the 2014-2020 financing period which also includes common provisions for the five CSF Funds, namely the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF).

2. Despite the late publication of the legislative package, the Presidency managed to advance significantly its examination during 13 meetings of the Structural Actions Working Party (SAWP).
3. The Presidency aims to hold an orientation debate amongst the Ministers responsible for Cohesion Policy within the margins of the General Affairs Council on 16 December 2011. This Presidency report is intended to serve as a reference point for the exchange of views among Ministers which will be conducted on the basis of the questionnaire provided by the Presidency. The debate of the Ministers should provide guidance for the further negotiations of the legislative package and its outcomes will be presented in the Presidency report which will be presented to the SAWP in December 2011.

## **II. STATE OF PLAY**

4. Thanks to the efforts of the previous Presidencies, the Commission and Member States (MSs), the ground for the negotiations on the legislative package has been duly prepared. The whole legislative package was presented during the first 2 meetings which allowed MSs to pose general questions and start to deal with specific issues related to relevant parts of Cohesion Policy package. Following the agreement with the Trio partners, the Presidency structured the detailed discussions into thematic negotiation blocks.
5. So far the discussions in the SAWP have been centred on the following thematic negotiation blocks: strategic programming, thematic concentration, ex-ante conditionalities and performance review, and territorial development. In addition, due to their importance to Cohesion Policy, the SAWP has provided contribution to the debates on the Connecting Europe Facility and macroeconomic conditionalities which are primarily conducted within the framework of the discussion on the Multiannual Financial Framework. To facilitate the discussion in the SAWP, the Presidency organised 3 technical meetings related to the negotiation blocks on strategic programming, territorial development and ex-ante conditionalities.

## General observations stemming from up to date discussion

6. MSs welcomed the main directions of the changes of future Cohesion Policy proposed by the Commission, i.e.: a direct linkage of Cohesion Policy with the Europe 2020 Strategy's targets and objectives through a set of thematic objectives, thematic concentration on these objectives which will bring the biggest added value, orientation towards the desired results and an integrated approach to development at the European level (a set of common provisions for the five Funds) as well as at the other appropriate territorial levels. The majority of MSs regarded the proposal of the Commission as a good starting point for the negotiations, while at the same time they signalled that there is still a considerable room for improvement of the specific mechanisms and instruments. Many delegations underlined that effectiveness of the Cohesion Policy contribution to the Europe 2020 Strategy depends on ensuring that its support is adapted to the specific territorial context of MSs, regions and other types of territories in which policy operates.
7. Taking into account the discussion so-far, a set of guiding principles for assessment and improvement of the proposal of the Commission can be identified:
  - a. Some proposals of the Commission have raised doubts in terms of their accordance with the subsidiarity principle. It is therefore crucial to strike the right balance between the responsibilities of MSs and the Commission, especially in such areas as: the role of country-specific recommendations under Articles 121(2) of the Treaty on the Functioning of the European Union and the relevant Council recommendations adopted under 148(4) of the Treaty on the Functioning of the European Union, mechanisms of thematic concentration, ex-ante and macroeconomic conditionalities. This will in turn ensure sufficient ownership and result in greater effectiveness of Cohesion Policy's support.
  - b. At the same time, the partnership principle should continue to foster multi-level and bottom-up features of Cohesion Policy by involving the relevant partners in the process of strategic programming and implementation according to the established modes of cooperation in a given Member State.

- c. Moreover, flexibility and proportionality is necessary in order to accommodate the different institutional settings in all MSs and regions as well as to reflect their specific territorial context and growth potentials. The volume of Cohesion Policy support and its specific role in a given Member State should be taken into account when defining obligations for all relevant parties involved in the preparation and implementation of the programmes. Any administrative burden should be well-justified by clear benefits in terms of effectiveness and efficiency.
- d. The multiannual character of Cohesion Policy requires a stable strategic and legal environment for investment throughout the whole programming period. That is why the regulations should provide sufficient legal certainty for all parties involved in Cohesion Policy's implementation, so that their activities will not be impeded by late adoption of all the necessary legal provisions or their frequent modification during the programming period.
- e. It is therefore indispensable – according to a large majority of the delegations – to give a new impetus to the simplification process and make the new legal framework of Cohesion Policy lighter and more user friendly. This should be done by eliminating excessive details, overlaps or ambiguities.
- f. Since the Commission proposed a set of common provisions for the five Funds in one single legislative act – what was welcomed by MSs – it is now essential to ensure coordination of negotiations of the Funds-specific regulations in order to ensure harmonisation and *coherence*.

### **State of the debate on specific thematic negotiation blocks**

- 8. The choice of the thematic negotiation blocks handled by the Presidency in the first place was guided by the necessity to start preparations for the next programming period as soon as possible in order to avoid any delays in launching the implementation of the 2014-2020 programmes. It is therefore envisaged that certain sections of the blocks on

strategic programming and thematic concentration – for which the Presidency tabled its compromise proposal – will have to be reviewed once the detailed examination of some other, related thematic negotiation blocks has been conducted in the SAWP.

## **Strategic programming**

9. During the discussion on strategic programming, one issue has resurfaced repeatedly, i.e. the practical mechanisms for linking Cohesion Policy with the Europe 2020 Strategy and the European Semester. Many delegations questioned linking the CSF, the Partnership Contract and the programmes with the country-specific recommendations under Articles 121(2) of the Treaty on the Functioning of the European Union and the relevant Council recommendations adopted under 148(4) of the Treaty on the Functioning of the European Union both in the light of their legal status (non-binding) and of their time horizon (yearly). According to a number of MSs, those recommendations refer to a wider spectrum of public policies and structural reforms, and not specifically to the Cohesion Policy. Several MSs suggested linking the Partnership Contract and programmes with the National Reform Programmes instead.
10. A key novelty of the strategic programming process, aiming at a more integrated approach, is that in addition to covering the ERDF, the ESF and the CF, the proposed Common Strategic Framework (CSF) would also apply to the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund. Generally, MSs welcomed the alignment and coordination of all the five Funds under the CSF. According to a number of delegations, the CSF should provide a strategic guidance and coordination regarding the thematic and territorial dimension of the support from the CSF Funds and other EU policies at the European level, but it should not impose one-size-fits-all restrictions for the Funds' interventions at the national and regional level. In this context the introduction of the key actions has been questioned by many MSs as regards their link with the other elements of the strategic programming – especially the thematic objectives, the investment priorities and the categories of intervention.

Moreover, many delegations expressed their concerns about the intention of the Commission to adopt such a essential document by means of a delegated act. On the basis of the option paper, the possible other ways of adopting the CSF were explored, i.e. as a part of the main body of the General Regulation, as a separate regulation of the European Parliament and the Council and as an Annex to the Common Provisions Regulation – the last option was preferred by a significant number of the delegations. Moreover, some MSs considered that the territorial dimension of the CSF should be further enhanced.

11. **The Partnership Contract (PC)** is another key element of the strategic programming arrangements, since it presents the Member State's strategy to make the best use of its CSF Funds' allocation. Many MSs underlined that they should be allowed to adapt the PC to their country-specific situation and multi-level governance structures. Among calls from MSs for keeping the PC as simple as possible, many also expressed their concerns about the PC timing issues. Namely, according to the proposal of the Commission, the draft PC is supposed to be submitted together with the draft programmes, which a number of MSs regarded as not feasible. In addition, some MSs assessed that the six-month period for the approval of the PC by the Commission is toolong.
12. The Cohesion Policy Funds shall be implemented through **operational programmes** that are in coherence with the PC. However, some MSs had concerns about the potential overlaps between OPs and issues already included in the PC. Generally, MSs welcomed the possibility of preparing multi-fund OPs. However, many MS also raised doubts whether an integrated, multi-fund approach could really work on the ground, since the proposed level of cross-financing is lower in comparison to the current programming period and priority axes are supposed to be mono-fund.
13. The proposal of the Commission to introduce an innovative pilot instrument of **Joint Action Plan** was welcomed by MSs but further in-depth examination is necessary.

14. In the area of the **European Territorial Cooperation** some MSs expressed concerns to what extent the ETC should be included in the PC and how to ensure proper coordination between PCs of different MSs when considering interventions within the ETC OPs.
15. The general directions presented in the compromise proposal of the Presidency regarding this thematic negotiation block were welcomed by the MSs.

### **Thematic concentration**

16. Overall, the MSs were supportive of the idea of **thematic concentration** and the introduction of a menu of thematic objectives as a way to achieve greater result-orientation and thus increase effectiveness and efficiency of the policy. Nevertheless, MSs expressed doubts regarding some proposed solutions. In particular:
  - a. Some MSs questioned the **different concentration mechanisms** envisaged for the ERDF and the ESF. More specifically, they had reservations towards the rationale behind the ring-fencing in different categories of regions which is based on a national allocation level for the ERDF and refers to thematic objectives, while it is based on an operational programme level for the ESF and refers to priority investments.
  - b. A number of MSs had reservations on whether the **ring-fencing of Funds** as part of the thematic concentration architecture would be an appropriate tool for this purpose, keeping in mind the different starting points of MSs as well as their diverse national policies, potentials, development challenges and Cohesion Policy allocations. More specifically, the proposed ring-fencing of at least 20% of the total national ESF allocation to the thematic objective related to social inclusion and poverty was questioned by MSs. Similarly, the ring-fencing of at least 5% of the total national ERDF allocation to urban development also raised doubts.

Further, the earmarking of the total national ERDF allocations to the low-carbon economy thematic objective was viewed by some MSs as too prescriptive and insufficiently taking into account the contribution of other thematic objectives and the Cohesion Fund to the low-carbon economy goals.

- c. A number of MSs drew attention to the unclear **link between thematic objectives, investment priorities and categories of interventions**, especially their role as monitoring and strategic programming tools. They called for a clear indication on who will decide on the designation of investment priorities and categories of interventions to support the achievement of thematic objectives.
  - d. Some MSs raised the issue of why in the thematic objectives, no support for large enterprises had been envisaged while arguing that by assisting large enterprises, spill-over gains would be realised and thus SMEs would be also benefit. Several MSs questioned the proposal of not-allowing more developed regions to invest, when this is duly justified, also in basic infrastructure, especially in the areas of ICT (Information and Communication Technologies) and transport. There were also voices supporting investments in energy infrastructures other than strictly related to the low-carbon economy as well as in tourism.
17. When it comes to the **ETC**, a significant number of MSs opposed the proposal to limit the list of thematic objectives in the cross-border and transnational strands only to four. Some MSs advocated for more explicit provisions on support for basic infrastructure especially due to the significance of such investments in the CBC OPs. There were also calls for providing greater clarification on the way of embedding the macro-regional strategies as an additional thematic objective within the transnational strand.
18. The Presidency has also prepared a compromise proposal on the thematic concentration negotiation block, which will be discussed in December 2011.

## Ex –ante Conditionalities and performance review

19. In general, MSs were in favour of **ex-ante conditionalities** as they would contribute to improving Cohesion Policy performance by ensuring that a number of prerequisites laying the ground for more efficient interventions are met before funding starts. However, serious concerns were raised about the lack of direct reference of ex-ante conditionalities proposed by the Commission to the effectiveness and efficiency of Cohesion Policy. MSs reiterated that the principles of proportionality and subsidiarity should be respected. Referring to proportionality, MSs reservations were stemming from the risk that the large number of the ex-ante conditionalities might lead to disproportionate administrative burden and making them inapplicable especially in MSs and regions with smaller allocation. As to subsidiarity, some MSs feared that the ex-ante conditionalities go beyond the scope of Cohesion Policy and interfere too much with national competences in other policy areas. In this respect the legal basis for some ex-ante conditionalities was questioned by several MSs. Some MSs have also questioned possibility to have interim payments suspended right at the beginning of the delivery period.
20. Many MSs expressed their general support for the envisaged **performance framework** with a view to achieving better results. On the other hand, a common concern of MSs was on the establishment of a **performance reserve** – the application of both negative and positive incentives can be counterproductive, as this may encourage less ambitious programmes with lower targets that could be achieved more easily. This may be particularly detrimental to growth and investments in research and innovation as such projects are inherently much more complex. In particular, many MSs raised serious concerns about the Commission’s proposal to apply financial correction at the end of the programming period, because this appeared to be a too harsh punishment applied at a very late stage.

## Territorial development

21. There was a general support among MSs for further enhancing of the territorial dimension of Cohesion Policy and for introducing of some specialised **instruments of territorial development**. However, some delegations voiced concerns whether the variety of territorial development instruments would not result in a fragmentation of Cohesion Policy's intervention. A significant number of MSs expressed the need for greater clarity on the relation between the Community-Led Local Development (CLLD) and the Integrated Territorial Investment (ITI) in terms of their roles and practical application.
  
22. As regards the **ITI** some MSs have expressed doubts if this should be the only instrument to deliver sustainable urban development strategies. The obligation to present in the Partnership Contract **a list of cities** where such strategies are to be implemented has raised doubts of many delegations which regarded this as an unnecessary restriction. There were also concerns on the sufficient capacity of cities to manage the ITIs and therefore a proposal for only partial delegation of powers to the cities. In addition, a number of MSs asked for further clarification of the reasons for introducing the **urban development platform**, while a very similar instrument, i.e. URBACT, will continue to function in parallel.
  
23. When it comes to **the CLLD**, many MSs welcomed the possibility to combine support from all the five CSF Funds while at the same time they voiced concerns if the implementation of the multi-fund local development strategies will not be too complicated – especially in the context of different implementation systems of the CSF Funds – and called for greater clarity of provisions in that respect. Moreover there is a need to further explain the proposal regarding the definition of area and population, the procedure for selection of local development strategies and the envisaged deadline.

## Other Cohesion Policy related issues

24. As regards the **macroeconomic conditionalities**, delegations were divided on the applicability of the instruments proposed by the Commission – some of them found it necessary to ensure a stable macroeconomic environment for the CSF Funds, while other believed that macroeconomic conditionalities can not be reconciled with the Cohesion Policy’s objectives. It was also underlined that regions and beneficiaries should not be punished because of failures of the central governments, which they could not influence. In this context, many MSs expressed doubts whether the principles of equal treatment and proportionality had been appropriately reflected in the Commission’s proposal, as less developed MSs and regions would be more seriously hit by possible sanctions than more developed ones. Several MSs proposed applying macroeconomic conditionalities to other parts of the EU budget in order to ensure a level playing field. A number of MSs considered that the proposal gives too much power to the Commission by allowing it to unilaterally amend PCs and the programmes.
25. The Commission presented to the SAWP the **Connecting Europe Facility (CEF)**, followed by a short discussion. The major issue is the idea of ring-fencing and transferring EUR 10 billion from the Cohesion Fund to the Connecting Europe Facility. A number of MSs expressed their reservations towards such a scheme not only because they would have consequently less funds allocated from the Cohesion Fund but also because they feared that if the funds directed to the CEF are not absorbed, they would be lost. Another concern raised by several MSs was that the CEF did not allow for investing in road infrastructure.

26. The legislative package for Cohesion Policy has also been discussed **within the framework of the other Council formations**. The Employment, Social Policy, Health and Consumer Affairs Council on 3 October 2011 reflected on the ESF contribution to the Europe 2020 strategy implementation while the General Affairs Council on 15 November 2011 concentrated on these issues which are closely related to the Multiannual Financial Framework negotiations. The outcomes of these debates are reflected in the respective Presidency reports:
- European Social Fund in the implementation of the Europe 2020 Strategy (document 18149/11) and
  - Multiannual Financial Framework (2014-2020) - Report on Progress of work within the Council in the second semester 2011 (document 17448/11).

### III. CONCLUSION

27. The Permanent Representatives Committee is requested to invite Council (General Affairs on 16 December 2011) to take note of this report.