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from: Presidency

to: Permanent Representatives Committee (part 2)/Council

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Subject: Cohesion Policy legislative package
 - elements of a partial general approach

1. On 6 October 2011, the Commission transmitted to the Council the Cohesion Policy legislative package, containing amongst others the following proposals:
 - a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the

European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006 (doc. 15243/11 FSTR 49 FC 39 REGIO 83 SOC 859 AGRISTR 56 PECHE 279 CADREFIN 87 CODEC 1632), hereinafter referred to as the Common Provisions Regulation,

- a Regulation of the European Parliament and of the Council on the European Social Fund and repealing Regulation (EC) No 1081/2006 (doc. 15247/11 FSTR 50 SOC 860 REGIO 84 CADREFIN 88 CODEC 1633), hereinafter referred to as the ESF Regulation,
- a Regulation of the European Parliament and of the Council on specific provisions concerning the European Regional Development Fund and the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (doc. 15249/11 FSTR 51 REGIO 85 CADREFIN 89 CODEC 1634), hereinafter referred to as the ERDF Regulation,
- a Regulation of the European Parliament and of the Council on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006 (doc. 15250/11 FC 40 REGIO 86 CADREFIN 90 CODEC 1635), hereinafter referred to as the Cohesion Fund Regulation and
- a Regulation of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (doc. 15253/11 REGIO 88 CADREFIN 92 FSTR 52 CODEC 1637), hereinafter referred to as the ETC Regulation.

2. On 14 March 2012, the Commission submitted corrigenda to the above mentioned proposals for the Common Provisions Regulation (doc. 15243/2/11 REV 2), the ESF Regulation (doc. 15247/1/11 REV 1), the Cohesion Fund Regulation (doc. 15250/2/11 REV 2) and the ETC Regulation (doc. 15253/1/11 REV 1), whilst there was no corrigendum to the ERDF Regulation.

3. On 24 April 2012, the General Affairs Council reached a partial general approach on the following thematic blocs:
 - a) programming (ADD 1 REV 3 to doc. 8207/2/12 REV 2), on the understanding that the references to country-specific recommendations in Articles 14(1), 15(1), 25(1) and 87(2) of the Common Provisions Regulation are not yet agreed upon;
 - b) ex ante conditionality (ADD 2 REV 2 to doc. 8207/2/12 REV 2);
 - c) management and control (ADD 3 REV 2 to doc. 8207/2/12 REV 2);
 - d) monitoring and evaluation (ADD 4 REV 2 to doc. 8207/2/12 REV 2);
 - e) eligibility (ADD 5 REV 2 to doc. 8207/2/12 REV 2); and
 - f) major projects (ADD 6 REV 2 to doc. 8207/2/12 REV 2).
4. The examination has been structured around thematic blocs, elements of which can be found in the Common Provisions Regulation, the ERDF Regulation, the ESF Regulation, the Cohesion Fund Regulation and the ETC Regulation.
5. For the following thematic blocs the negotiations have advanced to a stage where agreement on further elements of a partial general approach can be reached:
 - Thematic concentration,
 - Financial instruments,
 - Net revenue generating operations and public private partnerships,
 - Performance Framework.
6. The Permanent Representatives Committee has examined these blocks at its meeting on 13 June 2012.
7. The elements of these thematic blocs on which broad agreement has been reached in the Permanent Representatives Committee are set out in Addendum 1-4 to this note and can be resumed as follows:
 - a) Thematic Concentration:

The funds are concentrated on a limited number of thematic objectives reflecting the 2020 priorities of the Union and taking into account the level of development of the region. The main elements of the text submitted are:

- i. Provisions ensuring earmarking of an appropriate percentage of Cohesion Policy expenditure to employment, social inclusion and education.
- ii. Provisions adding investment in ICT to the thematic objectives, which ERDF resources shall be concentrated on (Innovation, SMEs and Climate Mitigation).
- iii. Provisions adjusting the investment priorities (including from the Cohesion Fund) which may contribute to the minimum share to be invested in climate mitigation with a corresponding increase in that share for less developed regions.

b) Financial Instruments:

The main elements of the text submitted are:

- i. Provisions to ensure that financial instruments address specific market needs.
- ii. Provisions to ensure that financial instruments be designed and implemented so as to be compatible with substantial participation by private sector investors.
- iii. Provisions to ensure that resources paid at any time to financial instruments correspond to the amounts effectively used for investments.
- iv. Provisions to ensure regulatory stability over the programming period, a reduction in "red tape" for companies and delegation of powers to the Commission with a well defined scope.

c) Net revenue generating operations and private public partnerships (PPPs):

The main elements of the text submitted are:

- i. Provisions for calculating the contribution from the funds in order to ensure an effective use of Union resources and avoid over-financing of revenue generating operations.
- ii. Provisions promoting clarity, consistency and simplification in the calculation of net revenue.
- iii. Provisions fully enabling the delivery of projects by means of PPP's.

d) Performance framework:

The main elements of the text submitted are:

- i. Provisions ensuring proper legal certainty for Member States surrounding the possibility of suspension and cancellation of funds in case of serious underachievement in meeting targets for a priority.
- ii. Provisions of legal certainty including: prior Commission communication of clearly identified implementation weaknesses; Member State failure to act thereon; possibility to shift suspended funds to performing programmes; no cancellation when failure is due to external factors beyond Member State's control.

8. Provided agreement is reached on the further elements submitted herewith, the still pending issues concern questions awaiting the conclusion of the negotiations on the multiannual financial framework and the financial regulation, including the issue of financial management. In addition work will need to be concluded on the common strategic framework, the amending regulation concerning the European Grouping of Territorial Cooperation as well as a number of relatively minor technical issues. Concerning the link with the country-specific recommendations in programming, the Presidency has in consultation with the Commission decided to await clarification of the general discussion on macroeconomic conditionality.
9. As it has been the case for the previous partial general approach reached at the General Affairs Council on 24 April 2012, it is important to note that any preliminary agreement on these thematic blocs has to be seen in the overall context of the negotiations on the Cohesion Policy legislative package and understood on the basis of the principle that "nothing is agreed until everything is agreed." In particular, the elements for a partial general approach submitted herewith do not prejudice the outcome of negotiations on other negotiation blocs, the financial regulation or the multiannual financial framework, while necessary consequential amendments in the blocs submitted herewith may occur as a result of the negotiations on these other blocs as a global picture emerges as well as on the triennial revision of the financial regulation.

10. On this basis the Council is invited to:

- agree on the following elements for a partial general approach concerning:
 - a) thematic concentration, as set out in ADD 1 REV 1 to this note,
 - b) financial instruments, as set out in ADD 2 REV 1,
 - c) net revenue generating operations and private public partnerships (PPPs), as set out in ADD 3 REV 1 and
 - d) the performance framework, as set out in ADD 4 REV 1.

- decide that the above preliminary agreement on these thematic blocs has to be seen in the overall context of the negotiations on the Cohesion Policy legislative package and understood on the basis of the principle that "nothing is agreed until everything is agreed" as set out in paragraph 9 above and that this is entered into the Council minutes.

- decide to enter in the minutes of that meeting the statements set out in Addendum 5 to this note.
