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No. Cion prop.: COM(2012) 496 final, COM(2011) 607 final/2, COM(2011) 611 final/2,
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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 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,
- 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, and
- 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.

2. On 14 March 2012, the Commission submitted corrigenda for the above mentioned proposals (except for the ERDF): the Common Provisions Regulation (doc. 15243/2/11 REV 2), the ESF Regulation (doc. 15247/1/11 REV 1), the ETC Regulation (doc. 15253/1/11 REV 1) and the Cohesion Fund Regulation (doc. 15250/2/11 REV 2).
3. On 11 September 2012, the Commission submitted an amended proposal for the Common Provisions Regulation (doc. 13730/12 FSTR 62 FC 39 REGIO 97 SOC 741 AGRISTR 120 PECHE 342 CADREFIN 392 CODEC 2128) on the provisions related to the Common Strategic Framework.
4. The examination of the legislative package has been structured around thematic blocs, elements of which can be found in the Common Provisions Regulation, the ESF Regulation, the ETC Regulation, the ERDF Regulation and the Cohesion Fund Regulation.
5. 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 references to key action of the Common Strategic Framework Articles 10, 11 (a) and the references to country-specific recommendations in Articles 14(1) (a) (i), 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).

6. On 26 June 2012, the General Affairs Council reached another partial general approach on the following thematic blocs:
- a) thematic concentration (ADD 1 REV 2 to doc. 11027/1/12 REV 1);
 - b) financial instruments (ADD 2 REV 1 to doc. 11027/1/12 REV 1);
 - c) net revenue generating operations and public private partnerships (ADD 3 REV 1 to doc. 11027/1/12 REV 1);
 - d) performance framework, on the understanding that Article 20 (2) and 20 (4) last subparagraph of the Common Provisions Regulation are not yet agreed upon (ADD 4 REV 1 to doc. 11027/1/12 REV 1).
7. For the following thematic blocs the negotiations have now advanced to a stage where agreement on further elements of a partial general approach can be reached:
- information and communication, technical assistance;
 - elements of the European Territorial Cooperation Regulation;
 - territorial development;
 - financial issues not in the MFF (non-transferability of resources, additionality, and modulation of co-financing rates);
 - country-specific recommendations;
 - management and control (adaptation to the Financial Regulation) and
 - indicators;
8. COREPER has examined the elements of these 7 thematic blocs on 3 and 11 October and reached a broad agreement on them. The elements are set out in the revised Addenda 1-7 to this note and can be resumed as follows:

Information and Communication, Technical Assistance

Information and Communication

- the content of the communication strategy is more strategic without the need to update detailed plans for information and communication activities;
- allowing for the communication strategy to be approved by one monitoring committee where it concerns several operational programmes avoiding thus lengthy approval procedures by several monitoring committees;
- modifying the requirements of Member States on information and communication measures ensuring the visibility of Cohesion Policy without increasing the administrative burden.

Technical assistance

- provision to ensure the continuity of the current practice regarding the advisory role of the Member States in technical assistance at the initiative of the Commission;
- allowing the use of the technical assistance funds between different Funds and across different categories of regions;
- provisions to ensure adequate funding for technical assistance concerning small programmes.
- modifications on the provision for the maximum share of the total allocation of the Cohesion Fund which may be used for the purpose of technical assistance for specific cases.

European Territorial Cooperation

- allowing for Member States to decide for a transfer of up to 15% of their financial allocation of one of the components of cross border or transnational cooperation to the other;
- provision for the inclusion of additional regions in the cross border cooperation programmes, ensuring thus the coherence of the programme areas;
- provision for beneficiaries to cooperate in three elements of cooperation including development and implementation; in addition, a derogation for allowing outermost regions to cooperate only on two elements;
- specification for cases of lead beneficiaries of cooperation programmes which are located in a third country or territory.

Territorial Development

Community-led local development

- provision for regulating in the main act the definition of the population areas for community-led local development rather than in a delegated act adopted by the Commission;
- clarification that the support of ESF, ERDF and EMFF to the community-led local development is optional;
- provision allowing for local action groups to be beneficiaries and implement operations;
- harmonisation of provisions with the European Agricultural Fund for Rural Development Regulation.

Sustainable urban development

- provision to keep the 5% ring-fencing for integrated actions for sustainable urban development where cities or other relevant bodies will participate in the selection of relevant operations; The delegation for management to cities or other relevant bodies is optional;
- Integrated Territorial investment tool is included in the part of the Regulation that concerns all Common Strategic Framework Funds allowing thus to be supported by the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund;
- provision for the modalities for the selection and implementation of innovative actions in the field of Sustainable Urban Development to be approved by Member States;
- provision clarifying that the activities of the urban platform are complementary to URBACT.

Financial Issues not in the MFF (non-transferability of resources, additionality and modulation of co-financing rates):

- slightly increased percentage of the allocated funds that Member States could transfer across categories of regions;
- changing the scope and the population thresholds relating to the verification for additionality;
- providing clarity on the reference level of investment and the link between the data submitted in the Stability and Convergence Programmes and the data used for the verification of additionality.

Country-specific recommendations

In Articles 14, 15, 25 and 87 of the Programming bloc, agreed on the basis of partial general approach at the GAC in April, the reference to relevant country-specific recommendation and relevant Council recommendations was placed in square brackets (doc. 8207/12 ADD 1 REV 3) for reviewing at a later stage.

In order to complete the partial general approach agreement on the programming bloc and strengthen the Councils position in view of the Informal Trilogues that have been initiated, a new proposal is submitted with the following main textual amendments:

- introducing a definition for relevant country-specific recommendations and relevant Council recommendations clarifying that only the recommendations that can be addressed by multi-annual investments, which fall directly into the scope of CSF Funds, will be taken into account,
- Statement by the Council clarifying that relevant country specific recommendations and Council recommendations are used as a reference point during the programming process while taking account of the needs and the territorial context of Member States, respecting their competences in formulating relevant policy measures and as well as the multi-annual character of Cohesion Policy,
- adjustments in Articles 14, 15, 25 and 87 clarifying that country-specific recommendations apply as a reference point for the programming documents,
- adjustment in Article 4, concerning general principles, allowing also for national reform programmes to be taken into consideration for the support of the CSF Funds at the appropriate level.

The compromise text has to be seen in conjunction with the Council Statement as set out in ADD 8 REV 1 to this note.

It should be noted that any compromise reached on the reference to relevant country-specific recommendations and relevant Council recommendations does not prejudice the outcome of the discussions on the provisions of Article 21 CPR regarding macro-economic conditionality, undertaken in the framework of the negotiations on the Multi-Annual Financial Framework.

Management and Control (adaptation to the Financial Regulation)

Following the political agreement on the Financial Regulation in June 2012, consequential adjustments are necessary concerning the Management and Control bloc that was agreed in the GAC in April 2012. The main adjustments in the submitted texts are:

- introducing a new Article setting out the procedure for the designation of the managing authority and the certifying authority;
- introducing the criteria for the designation of the relevant authorities as an Annex of the Common Provisions Regulation;
- provision allowing for the independent audit body which assesses the designation of the relevant authorities to be either the audit authority, or another public or private law body with the necessary audit capacity and independent of the relevant designated authorities;
- providing the option for Member States to submit to the Commission for observations the documents concerning the designation of authorities for programmes that exceed EUR 250 million and where there are significant changes in the functions of the designated authorities;
- provision allowing Member States to designate a coordinating body in liaison with the Commission;
- clarification that the application for interim payments will not be interrupted during the probation period.

Indicators

The main adjustments in the submitted texts are:

- adjustments for more clarity and alignment of all relevant Articles of the Fund- Specific Regulations (ERDF, ESF, CF) and the European Territorial Cooperation Regulation on the nature and use of common and programme-specific indicators;
- modifications to the Annexes for simplification and accuracy of the common indicators and their measurement units.

The compromise text has to be seen in conjunction with the statement by the Commission on guidance for common indicators as set out in ADD 8 REV 1 to this note.

9. As in the case of the previous partial general approaches reached at the General Affairs Council on 24 April and 26 June 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 or the multiannual financial framework, while necessary consequential amendments in the blocks submitted herewith may occur as a result of the negotiations on these other blocks as well as the multiannual financial framework. It is also noted that any agreement on the issue of 'country-specific recommendations' does not prejudice the outcome of the on-going discussions on macro-economic conditionality.

10. On that basis the Council is invited to:
 - agree on the following elements for a partial general approach concerning:
 - a) information and communication, technical assistance, as set out in ADD 1 REV 2 to this note;
 - b) elements of the European territorial cooperation Regulation, as set out in ADD 2 REV 1;
 - c) territorial development, as set out in ADD 3 REV 1;
 - d) financial issues not in the MFF (non-transferability of resources, additionality and modulation of co-financing rates), as set out in ADD 4 REV 1;
 - e) country-specific recommendations, as set out in ADD 5 REV 1;
 - f) management and control, as set out in ADD 6 REV 1 and
 - g) indicators, as set out in ADD 7 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 into its minutes the statements set out in ADD 8 REV 1 to this note.
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