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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)/Council
Subject: Council Conclusions on Streamlining the Delivery System and
Implementation of Cohesion Policy and the European Structural and
Investment (ESI) Funds post-2020
- Adoption

1. On 17 January 2018, the Presidency submitted to Member States draft Council conclusions on Streamlining the Delivery system and Implementation of Cohesion Policy and the European Structural and Investment (ESI) Funds post-2020.
2. The Working Party on Structural Measures examined the draft conclusions in its meetings of 22 January, 7 and 20 February and 6 March 2018. All delegations agreed to the draft conclusions as set out in the Annex to this note in a silence procedure ending on 9 March 2018.
3. Consequently, the Permanent Representatives' Committee is invited to recommend to the Council to adopt, as an "A" item, the draft Council conclusions as set out in the Annex to this note at its meeting dedicated to cohesion policy on 12 April 2018.

Draft

Council Conclusions on Streamlining the Delivery System and Implementation of Cohesion Policy and the European Structural and Investment (ESI) Funds post-2020

THE COUNCIL OF THE EUROPEAN UNION:

- (1) RECALLS the scope and aims of cohesion policy and the ESI Funds as set out in Art. 174 TFEU;
- (2) RECALLS its conclusions of 15 November 2017 on Synergies and Simplification for Cohesion Policy post-2020¹;
- (3) RECALLS the Final Conclusions and Recommendations of the High Level Group (HLG) on Simplification for post-2020²;
- (4) WELCOMES the Strategic Report 2017 of the Commission on the implementation of the European Structural and Investment Funds³;
- (5) TAKES NOTE of the positive assessment in this Strategic Report of the new elements introduced in the 2014-2020 programming period to improve delivery, such as ex-ante conditionalities, the alignment with relevant country-specific recommendations, the reinforced performance orientation and better synergies with other instruments; WELCOMES the progress achieved across Member States and policy areas with regard to the selection of projects, and CALLS on Member States to further speed up the implementation and spending in view of maximizing the contribution of the European Structural and Investment (ESI) Funds to key Union priorities;

¹ Doc. 14263/17.

² http://ec.europa.eu/regional_policy/en/information/publications/reports/2017/esif-simplification-hlg-proposal-for-policymakers-for-post-2020.

³ Doc. 15788/17 + ADD 1.

- (6) ACKNOWLEDGES at the same time the slow start of the programmes in the period 2014-2020, and TAKES NOTE of the different reasons for delays, such as the late adoption of the legislation, the complexity of the rules and the introduction of new rules, time-consuming procedures for designating the competent authorities in the Member States, as well as the overlap of the closure of the programming period 2007-2013 with the start of the new programming period 2014-2020; CONSIDERS therefore that challenges still remain and a substantial simplification of the implementation of the ESI Funds post-2020 is needed;
- (7) NOTES that these Council Conclusions do not prejudice the outcome either of the negotiations on the future EU Multiannual Financial Framework or of future discussions of cohesion policy post-2020;
- (8) REMAINS COMMITTED to a regular political debate among relevant ministers in the General Affairs Council to discuss cohesion policy and the ESI Funds;

I. A management and control system based on subsidiarity and proportionality

- (9) CONSIDERS that the delivery system of cohesion policy post-2020 should be strongly based on the principles of subsidiarity and proportionality, recognizing the important role of the competent authorities of Member States and regions with regard to programming, implementation, monitoring, evaluation, control and auditing; REITERATES its call on the Commission from last November⁴ to consider the introduction of a simpler delivery system based on the effective application of proportionality, reliance on national rules and well-functioning national and regional systems, open to be adopted by all Member States and regions on the basis of transparent, objective and measurable criteria;
- (10) UNDERLINES that the responsibilities of the Commission and the Member States should be more clearly defined in order to reduce overlaps;

⁴ Council conclusions on Synergies and Simplification for Cohesion Policy post-2020, doc. 14263/17, p. 6.

- (11) CONSIDERS, without prejudice to the responsibilities of the Commission under the Treaties to implement the budget in cooperation with the Member States, that the main tasks of the Commission should be to:
- Agree with the Member States on the objectives and strategic aspects of programming,
 - Monitor the achievement of outputs and results of programmes, and
 - Ensure, together with Member States, the effective and correct functioning of the management and control systems, as well as sound financial management, while at the same time exploring ways to transfer more responsibility to Member States concerning the operational aspects related to implementation;
- (12) CONSIDERS that the management and control systems should rely as much as possible on national rules and authorities; CALLS on the Commission, duly taking into account its responsibilities for budget implementation, to primarily focus on system audits rather than on individual projects and control of expenditures, which should fall mainly under the responsibility of the Member States;
- (13) CONSIDERS in addition that for systems that have proven to be well-functioning in the 2014-2020 programming period and have not undergone major changes in the new period, designation procedures should not be repeated;
- (14) CONSIDERS that the audits performed by the Commission should be risk-based and follow the single audit approach to avoid over-auditing; ENCOURAGES also Member States to apply a risk-based approach to management verifications, focusing on checks where they are most needed, and avoiding extensive controls, covering each element of individual payment applications;
- (15) CONSIDERS that the current system of annual acceptance of accounts should be reviewed in order to assess how the administrative burden can be reduced;

II. Simplified legislation and flexible programming

- (16) REITERATES that simplification of the rules is key to timely implementation of the ESI Funds and the achievement of more and better results of the policy, thereby also increasing its visibility; CONSIDERS that simplification should take place both at EU and at national level;
- (17) CONSIDERS, that legislation post-2020 should provide for enhanced application of national legislation wherever possible, be flexible and particularly focus on the main elements of the management of the ESI Funds; detailed provisions for all type of cases, derogations and guidelines should be avoided;
- (18) CONSIDERS also that post-2020 EU legislation should, where appropriate and taking into account the specificities of the different funds, ensure harmonisation of the rules, procedures, and definitions applicable to the different Funds under direct and shared management,; the content of the various regulations should not overlap and, whenever appropriate and based on previous experiences, current elements should be kept to ensure continuity;
- (19) RECALLS its position set out in its conclusions of November 2017⁵, that the application and compliance enforcement of competition rules necessary for the functioning of the internal market should provide for consistent treatment of similar projects across the EU budget irrespective of the management mode, while taking into account the specificities of the agricultural and fisheries sectors;
- (20) UNDERLINES that such harmonization of rules governing the ESI Funds is important to enable synergies from the use of various instruments, thereby making full use of their potential; CONSIDERS that the objectives of the individual EU instruments should be well defined in order to ensure better demarcation between them; the multi-fund programming approach should be strengthened by creating a more flexible programme structure allowing for the combination of different ESI Funds interventions, while the use of the approach should remain optional;

⁵ Doc. 14263/17, p. 3.

- (21) CONSIDERS that Partnership Agreements should focus on overarching objectives and general strategic aspects affecting all ESI Funds, and should not overlap with the content of the programmes, which should in turn focus on operational aspects ; furthermore, the format of the Partnership Agreements and the programmes should be significantly shortened and streamlined, and limited to those key aspects which are to be agreed between the Member State, the managing authorities and the Commission; the possibility of merging Partnership Agreements with programmes should be explored for Member States and regions with few programmes or a small allocation of funds;
- (22) CONSIDERS that greater flexibility in the programming and re-programming should be ensured, thus allowing Member States and regions to accommodate their specific needs within the thematic scope of Cohesion policy;
- (23) INVITES the Commission to explore ways to provide Member States and regions with options to react quickly to unforeseen circumstances, readjust the objectives of the programmes and allow for their rapid amendment;
- (24) CONSIDERS that the use of simplified cost options should be extended in the post-2020 programming period and CALLS on the Commission to explore the possibility to enhance their use, including for projects subject to public procurement;
- (25) CALLS on the Commission to continue its efforts aimed at the development and a more extensive use of off-the-shelf simplified cost options and payments based on the fulfilment of conditions, as early as possible in the programming process and in close cooperation with Member States;
- (26) UNDERLINES that auditors are important players in helping Member States to prevent errors and avoiding a lack of legal certainty in applying simplified cost options and SUGGESTS to the Commission and Member States to involve them in the preparation of rules for the post-2020 period by providing recommendations, where appropriate;

- (27) CALLS on the Commission to work towards simpler system of indicators with harmonised methodology, terminology and definitions, which would allow easier collection of data to assess the performance of cohesion policy and the ESI Funds while simplifying reporting;

III. Smooth transition between programming periods

- (28) CALLS on the Commission to submit its legislative proposals for post-2020 as soon as possible following the submission of the proposal for the future EU Multiannual Financial Framework, and to continue the close cooperation and exchange with Member States on the key elements of the policy design and delivery during the preparatory process for the new legislation;
- (29) CONSIDERS that in order to facilitate and speed up implementation in the next programming period, Member States and the Commission should start preparations for the next programmes as early as possible, thus allowing for binding decisions on programmes to be taken as close as possible in time to the adoption of EU legislation;
- (30) CONSIDERS that the new legislation should provide for tools, such as 'phasing', to allow for a certain level of continuity for those long-term investments, for which the priorities, the intervention logic, the actions to be supported etc. have not changed, and the implementation of which is spanning over two programming periods;

IV. Future use of financial instruments

- (31) CONSIDERS that while the use of financial instruments should remain optional, the provisions related to financial instruments for post-2020 should encourage Member States and regions to deploy these instruments where and when their use is deemed appropriate;

- (32) TAKES NOTE that the primary goal of financial instruments supported by ESI Funds is to deliver on policy objectives and UNDERLINES that such support should avoid duplication with financing tools already available on the market; CONSIDERS that the set-up, implementation and reporting of financial instruments should be significantly simplified; furthermore, the combination of financial instruments and grants should become much easier in the next programming period;
- (33) CONSIDERS that a level playing field should be ensured between financial instruments under the direct and shared management modes;

V. Territorial approach

- (34) CONSIDERS that the integrated approach is an essential element of the European Structural and Investment Funds; ACKNOWLEDGES that the territorial instruments of the period 2014-2020, such as the Integrated Territorial Investments (ITI), the Community-Led Local Development (CLLD) or mixed priority axes, should be maintained post-2020; notwithstanding the specificities of the European Agricultural Fund for Rural Development (EAFRD), the application of these instruments should be optional and be based on integrated territorial strategies and significantly simplified in order to facilitate the implementation of the instruments and better adapt them to the socio-economic situation of a given type of territory, thereby allowing for the involvement of various entities in the delivery of public policies without imposing excessive administrative burden;
- (35) WELCOMES the Commission Communication "Boosting growth and cohesion in EU border region"⁶ and TAKES GOOD NOTE of the suggestions therein regarding further EU action aimed at facilitating cross-border cooperation, including beyond 2020 and CALLS on the Commission to explore the possibilities to extend such studies to the maritime and further external borders of the EU, as appropriate;

⁶ Doc. 12419/17 + ADD 1.

- (36) ACKNOWLEDGES the European added value of European Territorial Cooperation and STRESSES that cross-border, transnational and interregional territorial cooperation, including across maritime borders and with third countries, should continue to be part of Cohesion policy post 2020, while the implementation of Interreg programmes should be facilitated in order to increase their effects;
- (37) WELCOMES the Commission Communication on smart specialisation, entitled "Strengthening Innovation in Europe's Regions: Strategies for resilient, inclusive and sustainable growth"⁷, including the pilot actions to test new approaches for interregional innovation projects and for areas undergoing industrial transition, as well as actions in favour of less developed regions;
- (38) WELCOMES the Commission Report on the Urban Agenda for the EU⁸ and ACKNOWLEDGES that the Urban Agenda of the EU introduced a new model of partnership and direct dialogue between urban authorities, national and European institutions and other stakeholders to address common urban challenges; CALLS on the Commission and Member States to continue to play an active role in implementing the Urban Agenda for the EU; LOOKS FORWARD to the next Report of the Commission on the implementation of the Urban Agenda for the EU;
- (39) WELCOMES the Commission Communication "A stronger and renewed strategic partnership with the EU's outermost regions"⁹ and INVITES the Commission to continue working on specific measures for the Outermost Regions in accordance with Art. 349 TFEU regarding the special needs and opportunities of those territories;
- (40) INVITES the Commission to continue working on specific measures for rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions in accordance with Art. 174 TFEU.

⁷ Doc. 11426/17 + ADD 1.

⁸ Doc. 14599/17.

⁹ Doc. 12419/17 + ADD 1.