



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 December 2012

18125/12

**Interinstitutional File:
2012/0295 (COD)**

**SOC 1026
FSTR 91
CADREFIN 538
REGIO 173
CODEC 3134
INST 754
PARLNAT 400**

COVER NOTE

from: The House of Commons
date of receipt: 20 December 2012
to: Mr Dimitris Christofias, President of the Council of the European Union

Subject: Proposal for a Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived
[doc. 15865/1/12 REV 1 SOC 902 FSTR 70 CADREFIN 455 REGIO 122
CODEC 2594 - COM(2012) 617 final/2]
- *Opinion on the application of the Principles of Subsidiarity and Proportionality*¹

Delegations will find attached the above mentioned opinion.

¹ For available translations of this opinion see the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>



HOUSE OF COMMONS

President of the Council of the European Union
Council of the European Union
Rue de la Loi 175
1048 Brussels
Belgium

By email: sj6.parlnat@consilium.europa.eu
dri.parlnat@consilium.europa.eu

18 December 2012

Dear Mr President,

EUROPEAN UNION DOCUMENT NO. 15865/12 AND ADDENDA 1 AND 2,
DRAFT REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL ON THE FUND FOR EUROPEAN AID TO THE MOST DEPRIVED

On 18 December 2012, the House of Commons of the United Kingdom Parliament resolved as follows:

That this House considers that the draft Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived (European Union Document No. 15865/12 and Addenda 1 and 2) does not comply with the principle of subsidiarity for the reasons set out in Chapter 3 of the Twenty-second Report of the European Scrutiny Committee (HC 86-xxii); and, in accordance with Article 6 of Protocol (No. 2) of the Lisbon Treaty on the application of the principles of subsidiarity and proportionality, instructs the Clerk of the House to forward this reasoned opinion to the presidents of the European institutions.

I enclose the relevant extract of the report.

Yours sincerely,
Robert Rogers

Robert Rogers, Clerk of the House of Commons
London SW1A 0AA T: 020 7219 1310/3758

attention to a number of areas of concern. These include the potentially significant costs for some end-users, including small and medium-sized enterprises, arising from the control of use provisions; the need to clarify the implications of the proposed ban on pre-charging of refrigeration, air conditioning and heat pump equipment; and the extent to which this might also introduce additional costs for end-users during installation and give rise to practical and safety issues.

2.15 In view of this, we believe that it would be helpful if the House were to have an opportunity at this stage to consider these issues further, and we are therefore recommending this proposal for debate in European Committee A.

3 European aid to the most deprived

(34394) 15865/12 COM(12) 617 + ADDs 1–2	Draft Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived Commission staff working documents: Impact assessments
--	--

<i>Legal base</i>	Article 175(3) TFEU; co-decision; QMV
<i>Document originated</i>	24 October 2012
<i>Deposited in Parliament</i>	13 November 2012
<i>Department</i>	Work and Pensions
<i>Basis of consideration</i>	EM of 23 November 2012
<i>Previous Committee Report</i>	None
<i>Discussion in Council</i>	No date set
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	Not cleared; further information requested; for debate on the Floor of the House on a draft Reasoned Opinion before the House rises for the Christmas recess

Background

3.1 Article 3 of the Treaty on European Union (TEU) sets out the general objectives of the European Union. It includes references to:

- the sustainable development of the EU on the basis of a highly competitive social market economy;
- promoting social justice and protection, equality, solidarity between the generations and protection of the rights of the child;

- promoting economic, social and territorial cohesion and solidarity among Member States; and
- combating social exclusion.⁷

3.2 Articles 9 and 10 of the Treaty on the Functioning of the European Union (TFEU) are horizontal provisions which seek to integrate the goals of high employment and adequate social protection, and the fight against social exclusion and discrimination, into all aspects of EU policy and action.

3.3 Although concepts of equality, solidarity, social justice and social cohesion permeate the EU Treaties, Treaty provisions on social policy focus primarily on the labour market and EU cohesion policy is principally a vehicle for reducing disparities in the levels of social and economic development between regions across the EU. The European Social Fund (ESF) straddles both policy areas, operating as an instrument of EU social and cohesion policy. ESF interventions focus specifically on improving employment opportunities for workers within the EU's internal market by encouraging geographical and occupational mobility and by helping workers adapt to change.⁸

3.4 In a Communication setting out the objectives of EU cohesion policy for the period 2014–20, the Commission called for a greater thematic concentration of financial resources on the objectives and headline targets of the Europe 2020 Strategy.⁹ One of the headline targets seeks to,

“promote social inclusion, in particular through the reduction of poverty, by aiming to lift at least 20 million people out of the risk of poverty and exclusion.”

Promoting social inclusion and combating poverty is included as one of four objectives in the draft Regulation establishing the European Social Fund for 2014–20. It also includes a requirement to ensure that at least 20% of ESF resources allocated to each Member State is used to fund this objective.¹⁰

The draft Regulation

3.5 The purpose of the draft Regulation is to establish a new Fund for European Aid to the Most Deprived (“the Fund”), with a proposed budget of €2.5 billion for the period 2014–20, to alleviate poverty and material deprivation in the EU by supporting national schemes for the distribution of food products and the provision of basic consumer goods for the personal use of homeless people or children. It would replace an existing EU Food Distribution Programme for the Most Deprived, in place since 1987, which enables Member States to use public intervention stocks of agricultural products as food aid. The Food Distribution Programme is funded by the European Agricultural Guarantee Fund (EAGF). Participation is voluntary but has risen in recent years to include 20 Member States (but not the UK). For some Member States, it remains the principal source of

⁷ See Article 3(3) TEU.

⁸ See Article 162 TFEU.

⁹ See (32199); HC 428-xi (2010–11), chapter 6 (15 December 2010) and HC 428-xviii (2010–11), chapter 6 (2 March 2011).

¹⁰ See (33218); HC 428-xli (2010–12), chapter 7 (9 November 2011) and HC 86-v (2012–13), chapter 9 (20 June 2012).

support for food distribution to the most deprived.¹¹ However, the Programme is being phased out by the end of 2013 because the range and quantity of products in intervention stocks has diminished, and there is limited scope for Member States to supplement intervention stocks with food purchases on the open market.¹²

3.6 Unlike the Food Distribution Programme, which is a measure based on the EU's Common Agricultural Policy, the new Fund for European Aid to the Most Deprived is an instrument of the EU's cohesion policy, based on Article 175(3) TFEU. This Article provides for the adoption of specific actions outside the framework of the EU's Structural Funds (the European Social Fund and European Regional Development Fund) if necessary to achieve the objectives of economic, social and territorial cohesion. Although the Fund would be resourced from the Structural Funds, it is intended to complement the objectives of the ERDF and ESF by offering temporary relief to the most deprived, who are also likely to be furthest from the labour market. Article 3 of the draft Regulation states:

“The Fund shall promote social cohesion in the Union by contributing to achieving the poverty reduction target of at least 20 million of the number of persons at risk of poverty and social exclusion in accordance with the Europe 2020 Strategy. The Fund shall contribute to achieving the specific objective of alleviating the worst forms of poverty in the Union by providing non-financial assistance to the most deprived persons.”

3.7 Member States would be responsible for identifying, by means of objective criteria, those individuals, families or households qualifying as “most deprived” and for selecting partner organisations at national level to distribute food and basic consumer goods. These may be directly purchased by partner organisations or provided to them free of charge by a public body. A small element of funding may be used by partner organisations for social inclusion activities involving beneficiaries of EU aid.

3.8 The Fund would be managed in the same way as other EU cohesion instruments, using a shared management model. Each Member State would be required to submit an operational programme for the period 2014–20 indicating how it intends to use its allocation of funding. It may, for example, choose to focus on only one of the three types of material deprivation within the scope of the Fund, or to address all three: food deprivation, homelessness, or the material deprivation of children. The allocation of resources between Member States would be based on population data provided by Eurostat indicating the proportion suffering from severe material deprivation¹³ and living in households with very low work intensity.

3.9 Financial support from the Fund would be subject to the principle of co-financing, with the EU contribution capped at 85% of eligible public expenditure. However, this rate may be increased by a further 10% at the request of Member States facing liquidity problems and receiving additional support from various EU financial support mechanisms. Member

¹¹ See Annex 2 to ADD 1.

¹² See (31957) and (33197); HC 428-xxxix (2010–12), chapter 7 (26 October 2011).

¹³ Severe material deprivation is measured in terms of the inability to afford at least four of the following: payment of rent, mortgage or utility bills; adequate heating; coping with unexpected expenses; eating meat or protein every second day; taking one week's annual holiday away from home; purchasing any one of the following: a colour TV, car, telephone, or washing machine.

States, partner organisations and beneficiaries of aid would be required to publicise the support obtained from the Fund and to ensure that the EU contribution is made visible.

3.10 The draft Regulation contains detailed provisions on the management and control of the Fund which are similar to those applicable to EU Structural and Cohesion Funds. In an attempt to avoid duplication, the Fund may be implemented through the same structures and procedures as Member States have established for the European Social Fund.

The justification for EU action

3.11 The Commission estimates that nearly one quarter of Europeans (116 million) are at risk of poverty or social exclusion and approximately 40 million suffer from severe material deprivation, adding:

“While the needs of those who are at the margins of society keep growing, the ability of Member States to support them has in many cases diminished. Social cohesion is threatened by fiscal constraints more than ever before. In many Member States it is felt that policies decided at European level are in some way responsible for these developments.”¹⁴

3.12 The Commission suggests that,

“[C]urrently more and more social stakeholders and EU citizens perceive the EU as a threat for their personal and collective protection. Action at European level is required, all the more so, as a lack of social cohesion would hinder the Union’s further development and undermine its legitimacy in the eyes of its citizens.”¹⁵

3.13 The Commission describes food deprivation, homelessness, and the material deprivation of children as “the worst and most socially corrosive forms of poverty” and says that the new Fund is intended to assist the most vulnerable “who suffer from extreme forms of poverty [and who] are too far removed from the labour market to benefit from the social inclusion measures of the ESF.”¹⁶ The Commission estimates that the new Fund would provide direct material assistance for approximately 2.1 million people each year, but would have a multiplier effect extending its reach to at least 4.2 million people (roughly 10% of those experiencing severe material deprivation throughout the EU).

3.14 The Commission underlines that EU cohesion policy is not simply a tool for reducing regional disparities, but also seeks to promote social cohesion. It suggests that the new Fund is strongly anchored in the principle of subsidiarity, adding:

“EU-level action is necessary given the level of poverty and social exclusion in the Union and the unacceptable diversity of the situation among individual Member States, further aggravated by the economic and fiscal crisis, which has led to a deterioration of social cohesion and lessened the chances of achieving the Europe 2020 Strategy’s objective in relation to the fight against poverty and social exclusion.

¹⁴ See p.2 of the Commission’s Explanatory Memorandum.

¹⁵ See p.14 of ADD 1.

¹⁶ See p.3 of the Commission’s Explanatory Memorandum.

“European financial support helps to catalyse action at national level, coordinate efforts and to develop and introduce instruments to promote social inclusion. It allows the Union to lead by example.”¹⁷

3.15 In its accompanying Impact Assessment (ADD 1), the Commission describes poverty and social exclusion as major obstacles to achieving the balanced vision of economic growth and social progress set out in the Europe 2020 Strategy. It suggests that the type of emergency assistance provided by the new Fund is needed to address continuing uncertainty “about the ability of all Member States to sustain social expenditure and investment at levels sufficient to ensure that social cohesion does not deteriorate further” and to achieve the objectives and headline targets of the Europe 2020 Strategy.¹⁸

The Government’s view

3.16 In an Explanatory Memorandum dated 23 November the Minister for Employment (Mr Mark Hoban) questions whether the draft Regulation complies with the principle of subsidiarity, on the grounds that it is primarily a social policy measure which can be sufficiently achieved by Member States acting on their own.

3.17 The Minister notes that the UK stopped participating in the existing Food Distribution Programme in the mid-1990s because of dwindling UK intervention stocks and bureaucratic overheads. He says that the Government intends to work with other like-minded Member States to oppose the new Fund for the following reasons:

- measures of this type are better and more efficiently delivered by individual Member States through their own social programmes, and their regional and local authorities, who are best placed to identify and meet the needs of deprived people in their countries and communities;
- the use of EU cohesion policy processes would impose heavy and costly administrative burdens on Member States and partner organisations, without adding value to existing arrangements in Member States; and
- EU cohesion policy should continue to tackle poverty through European Social Fund programmes to help disadvantaged people enter employment — the Government does not, therefore, support taking resources from the European Social Fund or other cohesion policy programmes to finance the new proposal.

3.18 The Minister indicates that the Government will also examine the proposed inclusion of delegated and implementing powers to ensure that their use is appropriate. He says that the Government does not intend to launch a consultation on the draft Regulation.

Conclusion

3.19 We are struck by two elements which appear to be at the heart of the Commission’s proposal for a new Fund for European Aid for the Most Deprived. The first is the

¹⁷ See pp.4–5 of the Commission’s Explanatory Memorandum.

¹⁸ See p.26, ADD 1.

perception that the EU shares responsibility for the austerity measures being implemented in many EU Member States and has, as a result, forfeited the confidence of ordinary citizens in its ability to ensure an adequate level of social protection. The second is the Commission's desire for a high visibility EU instrument, capable of providing direct material assistance to those worst affected by rising levels of poverty and social exclusion, to mitigate negative perceptions of its contribution to the economic and financial crisis.

3.20 The justification advanced by the Commission for action at EU level is two-fold. It observes that poverty reduction and social inclusion are essential elements of the sustainable growth agenda set out in the Europe 2020 Strategy and are reflected in the headline target endorsed by the European Council. It also argues that the goal of social inclusion necessitates action by the EU because the economic and financial crisis has diminished the ability of some Member States to maintain adequate levels of social expenditure and investment. However, the fact that the Commission is anxious to be seen to act, does not mean that EU action is necessary or justified.

3.21 We are disappointed that the Commission's Explanatory Memorandum accompanying the draft Regulation contains only the most cursory statement of the justification for EU action and fails to include any of the qualitative and quantitative indicators required by Article 5 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality. The Commission's Impact Assessment states elliptically that the draft Regulation "leaves to Member States and their lower levels of government decisions that should be taken at their respective levels"¹⁹ but does not explain why the objectives of the draft Regulation cannot also be sufficiently achieved by Member States. Indeed, whilst the Commission suggests that there is "uncertainty" about the ability of some Member States to provide the social investment needed to prevent a further fracturing of social cohesion, it does not assert that all Member States are in the same position. The draft Regulation would, however, bind all Member States.

3.22 We note, moreover, that the European Council, in endorsing the Europe 2020 headline target on social inclusion and poverty reduction, made clear that Member States were free to set their own national targets using the most appropriate indicators which take account of their national circumstances and priorities.²⁰ It is far from clear that the European Council contemplated that an EU funding instrument would be necessary or desirable in order to meet the headline target. We do not accept, therefore, that the Commission has provided a sufficient justification for EU action and recommend that the House sends the attached Reasoned Opinion to the Presidents of the EU institutions before 26 December, following a debate on the Floor of the House.

3.23 The Minister indicates that the Government intends to oppose the draft Regulation. We assume that this may be the reason why the Government does not propose to initiate a consultation. If so, we urge the Minister to reconsider. Whilst we do not think EU action is justified in this case, we also consider that the views of

¹⁹ See p.25, ADD 1.

²⁰ See the footnote to the headline target on social inclusion in the European Council Conclusions of 17 June 2010 at http://ec.europa.eu/eu2020/pdf/council_conclusion_17_june_en.pdf

stakeholders in the UK could help to establish a more robust evidence base against which to assess the potential benefits or costs of EU action. We therefore ask the Minister to consult interested stakeholders in the UK and to provide a summary of their views.

3.24 We note the Minister's view that the management of the Fund would lead to heavy and costly administrative burdens for Member States and partner organisations. As, however, the draft Regulation envisages that Member States may use the structures already established for their European Social Fund programmes to implement this Fund, we would welcome further explanation of the additional costs likely to be involved. We also ask the Minister to provide progress reports on the negotiations.

3.25 Meanwhile, the draft Regulation remains under scrutiny.

Reasoned Opinion of the House of Commons

Submitted to the Presidents of the European Parliament, the Council and the Commission, pursuant to Article 6 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality

concerning

Draft Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived 15865/12²¹

Treaty framework for appraising compliance with subsidiarity

1. The principle of subsidiarity is born of the wish to ensure that decisions are taken as closely as possible to the citizens of the EU. It is defined in Article 5(3) TEU:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

2. The EU institutions must ensure “constant respect”²² for the principle of subsidiarity as laid down in Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality.

3. Accordingly, the Commission must consult widely before proposing legislative acts; and such consultations are to take into account regional and local dimensions where necessary.²³

4. By virtue of Article 5 of Protocol (No 2), “any draft legislative act should contain a detailed statement” making it possible to appraise its compliance with the principles of subsidiarity and proportionality. This statement should contain:

- some assessment of the proposal’s financial impact;
- in the case of a Directive, some assessment of the proposal’s implications for national and, where necessary, regional legislation; and
- qualitative and, wherever possible, quantitative substantiation of the reasons “for concluding that a Union objective can be better achieved at Union level”.

²¹ COM(12) 617.

²² Article 1 of Protocol (No.2).

²³ Article 2 of Protocol (No.2).

The detailed statement should also demonstrate an awareness of the need for any burden, whether financial or administrative, falling upon the EU, national governments, regional or local authorities, economic operators and citizens, to be minimised and to be commensurate with the objective to be achieved.

5. By virtue of Articles 5(3) and 12(b) TEU national parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in Protocol (No. 2), namely the reasoned opinion procedure.

Previous Protocol on the application of the principle of subsidiarity and proportionality

6. The previous Protocol on the application of the principle of subsidiarity and proportionality, attached to the Treaty of Amsterdam, provided helpful guidance on how the principle of subsidiarity was to be applied. This guidance remains a relevant indicator of compliance with subsidiarity. The Commission has confirmed it continues to use the Amsterdam Protocol as a guideline for assessing conformity and recommends that others do.²⁴

“For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States’ action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

“The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States’ interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.”²⁵

“The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures”.

²⁴ See, respectively, pp.2 and 3 of the 2010 and 2011 Reports on Subsidiarity and Proportionality (COM(10) 547 and COM(11) 344).

²⁵ Article 5.

Proposed legislation

Background

7. The purpose of the draft Regulation is to establish a new Fund for European Aid to the Most Deprived (“the Fund”), with a proposed budget of €2.5 billion for the period 2014–20, to alleviate poverty and material deprivation in the EU by supporting national schemes for the distribution of food products and the provision of basic consumer goods for the personal use of homeless people or children. It would replace an existing EU Food Distribution Programme for the Most Deprived, in place since 1987, which enables Member States to use public intervention stocks of agricultural products as food aid. Participation is voluntary but has risen in recent years to include 20 Member States (but not the UK).

Operation

8. Unlike the Food Distribution Programme, which is a measure based on the EU’s Common Agricultural Policy, the new Fund for European Aid to the Most Deprived is an instrument of the EU’s cohesion policy, based on Article 175(3) TFEU. This Article provides for the adoption of specific actions outside the framework of the EU’s Structural Funds (the European Social Fund and European Regional Development Fund) if necessary to achieve the objectives of economic, social and territorial cohesion in the EU. Although the Fund would be resourced from the Structural Funds, it is intended to complement the objectives of the ERDF and ESF by offering temporary relief to the most deprived, who are also likely to be furthest from the labour market.

9. Member States would be responsible for identifying, by means of objective criteria, those individuals, families or households qualifying as “most deprived” and for selecting partner organisations at national level to distribute food and basic consumer goods. These may be directly purchased by partner organisations or provided to them free of charge by a public body. A small element of funding may be used by partner organisations for social inclusion activities involving beneficiaries of EU aid.

Legislative objectives

10. Article 3 of the draft Regulation defines the legislative objective as follows:

“The Fund shall promote social cohesion in the Union by contributing to achieving the poverty reduction target of at least 20 million of the number of persons at risk of poverty and social exclusion in accordance with the Europe 2020 Strategy. The Fund shall contribute to achieving the specific objective of alleviating the worst forms of poverty in the Union by providing non-financial assistance to the most deprived persons.”

11. The Commission estimates in its explanatory memorandum that nearly one quarter of Europeans (116 million) are at risk of poverty or social exclusion and approximately 40 million suffer from severe material deprivation, adding:

“While the needs of those who are at the margins of society keep growing, the ability of Member States to support them has in many cases diminished. Social cohesion is threatened by fiscal constraints more than ever before. In many Member States it is felt that policies decided at European level are in some way responsible for these developments.”²⁶

12. The Commission suggests in the impact assessment that,

“[C]urrently more and more social stakeholders and EU citizens perceive the EU as a threat for their personal and collective protection. Action at European level is required, all the more so, as a lack of social cohesion would hinder the Union’s further development and undermine its legitimacy in the eyes of its citizens.”²⁷

13. The Commission describes poverty and social exclusion as major obstacles to achieving the balanced vision of economic growth and social progress set out in the Europe 2020 Strategy. It suggests that the type of emergency assistance provided by the new Fund is needed to address continuing uncertainty “about the ability of all Member States to sustain social expenditure and investment at levels sufficient to ensure that social cohesion does not deteriorate further” and to achieve the objectives and headline targets of the Europe 2020 Strategy.²⁸

Subsidiarity

14. The Commission’s explanatory memorandum justifies the need for EU action as follows:

“EU action is justified on the grounds of Article 174 (TFEU) which provides for the Union to “promote its overall harmonious development” by “developing and pursuing its actions leading to the strengthening of its economic, social and territorial cohesion”, and on Article 175 (TFEU) which specifies the role of the EU structural funds in achieving this objective and makes provisions for the adoption of specific actions outside the Structural Funds.

“EU-level action is necessary given the level of poverty and social exclusion in the Union and the unacceptable diversity of the situation among individual Member States, further aggravated by the economic and fiscal crisis, which has led to a deterioration of social cohesion and lessened the chances of achieving the Europe 2020 strategy’s objective in relation to the fight against poverty and social exclusion.”²⁹

15. In its impact assessment, under the heading of “Right to Act”, the Commission states that “Article 174 (TFEU) provides for the Union to ‘promote its overall harmonious development’. The first subparagraph defines the overall objective of cohesion policy which is to ‘strengthen economic, social and territorial cohesion’. Cohesion policy is thus not

26 See p.2 of the (Commission’s) Explanatory Memorandum.

27 See p.14 of the impact assessment.

28 See p.26 of the impact assessment.

29 See p.4 of the Explanatory Memorandum.

limited to acting on regional disparities.”³⁰ It suggests that the new Fund is “strongly anchored in the principle of subsidiarity”, adding:

“While helping ensure the availability of emergency assistance for most deprived people across the Union in the context of the Europe 2020 strategy and thus contributing to strengthening social cohesion in the Union, it leaves up to Member States and their lower levels of government decisions that should be taken at their respective levels.”³¹

16. In its impact assessment, under the heading of “EU added-value” the Commission says:

“European financial support can demonstrate the direct solidarity of the Union with the poor people, thus taking up on the broad request by European citizens. It can encourage the exchange of experience and information about the effectiveness and efficiency of actions and it increases awareness of the situation in which these groups are by actually asking Member State’s representatives to talk about the situation and to develop a sort of strategy (Operational Programme) how best to address the immediate needs of these people. Finally, it allows the Union to lead by example.

“[...] As well as helping enable the most deprived members of the society to maintain their dignity and human capital it will contribute to the strengthening of social capital and social cohesion within their communities.

Aspects of the Regulation which do not comply with the principle of subsidiarity

17. The House of Commons considers that the draft Regulation of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived does not comply either with the procedural obligations imposed on the Commission by Protocol (No 2) or with the substantive principle of subsidiarity in the following respects.

i) Failure to comply with essential procedural requirements

18. By virtue of Article 5 of Protocol (No 2) “any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality”. The requirement for the detailed statement to be within the draft legislative act implies that it should be contained *in the Commission’s explanatory memorandum*, which forms part of the draft legislative act and which, importantly, is translated into all official languages of the EU. The fact that it is translated into all official languages of the EU allows the detailed statement to be appraised for compliance with subsidiarity (and proportionality) in all Member States of the EU, in conformity with Article 5 of Protocol (No 2). This is to be contrasted with the Commission’s impact assessment, which is not contained within a draft legislative act, and which is not translated into all the official languages of the EU.

³⁰ See p.24 of the impact assessment.

³¹ See p.25 of the impact assessment.

19. The presumption in the Treaty on European Union³² is that decisions should be taken as closely as possible to the EU citizen. A departure from this presumption should not be taken for granted but justified with sufficient detail and clarity that EU citizens and their elected representatives can understand the qualitative and quantitative reasons leading to a conclusion that “a Union objective can be better achieved at union level”, as required by Article 5 of Protocol (No 2). The onus rests on the EU institution which proposes the legislation to satisfy these requirements.

20. The extent of the Commission’s justification for compliance with subsidiarity in the explanatory memorandum is set out at paragraph 14 above. The first paragraph explains why the legal bases of Articles 174 and 175 TFEU give the EU the power to act (see further below); the second contains cursory generalisations unsupported by any evidence (see further below). There is no reference to the principle of subsidiarity.

21. The justification in the Commission’s explanatory memorandum falls disappointingly short of the contents required of the detailed statement in Article 5 of Protocol (No 2), as set out in paragraph 4 above; in particular there is no qualitative and quantitative substantiation of the necessity for action at EU level.

22. This omission, the House of Commons submits, is a failure on behalf of the Commission to comply with essential procedural requirements in Article 5 of Protocol (No 2).

ii) Failure to comply with the principle of subsidiarity

- Necessity

23. In the House of Commons’ view, necessity is a pre-requisite for action at EU level and for conformity with the principle of subsidiarity.

24. This view is confirmed by the Commission:

“Subsidiarity cannot be easily validated by operational criteria. The Protocol, as revised by the Lisbon Treaty, no longer mentions conformity tests, such as ‘necessity’ and ‘EU value added’. Instead it has shifted the application more towards the procedural aspects ensuring that all key actors can have their say. The Commission has continued to use ‘necessity’ and ‘EU value-added’ tests as part of its analytical framework and recommends the other actors to do likewise.”³³

25. Adequacy of national support: The Commission argues that the ability of Member States to support those who are at the margins of society has in many cases diminished, and that social cohesion is threatened by fiscal constraints more than ever before (see paragraph 11 above). Whilst the Commission suggests that there is “uncertainty” about the ability of some Member States to provide the social investment needed to prevent a further fracturing of social cohesion (see paragraph 13 above), it does not assert that all Member States are in the same position. Indeed, there is no qualitative or quantitative substantiation

³² Article 5.

³³ See p.3 of the 2011 Report on Subsidiarity and Proportionality (footnote 4).

of which Member States are unable to provide this investment either now or over the funding period. The draft Regulation would, however, bind all Member States.

26. Europe 2020 Strategy: A further justification advanced by the Commission for action at EU level is that poverty reduction and social inclusion are essential elements of the sustainable growth agenda set out in the Europe 2020 Strategy and are reflected in the headline target endorsed by the European Council. We note, however, that the European Council, in endorsing the Europe 2020 headline target on social inclusion and poverty reduction, made clear that Member States were free to set their own national targets using the most appropriate indicators which take account of their national circumstances and priorities.³⁴ It is far from clear that the European Council contemplated that an EU funding instrument would be necessary or desirable in order to meet the headline target. We do not accept, therefore, that the Commission has provided a sufficient justification for EU action on the basis of the Europe 2020 Strategy.

27. Public perception of the EU: We are struck by two elements which appear to be at the heart of the Commission's proposal for this new Fund. The first is the perception that the EU shares responsibility for the austerity measures being implemented in many EU Member States and has, as a result, forfeited the confidence of ordinary citizens in its ability to ensure an adequate level of social protection. The second is the Commission's desire for a high visibility EU instrument, capable of providing direct material assistance to those worst affected by rising levels of poverty and social exclusion, to mitigate negative perceptions of its contribution to the economic and financial crisis. The fact that the Commission is anxious to be seen to act does not mean that EU action is necessary or justified.

- EU value-added

28. It is axiomatic that poverty and social exclusion in EU Member States is a concern which requires action; it far less axiomatic that such action should be taken by the EU. For EU action to be justified there must be evidence of a problem that cannot be satisfactorily addressed by action at national or regional level in all EU Member States. We think that evidence is lacking.

29. Further, we are not convinced by the Commission's justification of its right to act under Articles 174 and 175 TFEU. Those Articles allow the EU take action leading to strengthening *its* social cohesion, but we question whether this extends to social cohesion in some (but not all) Member States. For this to be so, we think there would have to be evidence of some "unacceptable diversity" (see paragraph 14) in the provision of aid in some Member States that undermines social cohesion in other Member States, and therefore threatens social cohesion within the EU, which the Commission has not demonstrated.

³⁴ See the footnote to the headline target on social inclusion in the European Council Conclusions of 17 June 2010 at http://ec.europa.eu/eu2020/pdf/council_conclusion_17_june_en.pdf.

Conclusion

30. For these reasons the House of Commons considers this proposal does not comply with the principle of subsidiarity.