



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 February 2013

Interinstitutional File:

2011/0276 (COD)
2011/0275 (COD)
2011/0274 (COD)
2011/0273 (COD)
2011/0272 (COD)
2011/0268 (COD)

5609/1/13
REV 1

FSTR **4**
FC **3**
REGIO **8**
SOC **45**
AGRISTR **6**
PECHE **24**
CADREFIN **14**
CODEC **136**

NOTE

from : Presidency

to: Council

No. prev. doc.: 13730/12, 15247/1/11 REV 1, 15253/1/11 REV 1, 15249/11, 15250/2/11 REV 2, 15251/1/11 REV 1

No. Cion prop.: COM(2012) 496 final, COM(2011) 607 final/2, COM(2011) 611 final/2, COM(2011) 614 final, COM(2011) 612 final/2, COM(2011) 610 final/2

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,
- 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 amending Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and implementation of such groupings, hereinafter referred to as the EGTC amending 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), the Cohesion Fund Regulation (doc. 15250/2/11 REV 2) and the EGTC amending Regulation (doc. 15251/1/11 REV 1).
 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 references to key action of the Common Strategic Framework Articles 10, 11(a) 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, in the Common Provisions Regulation Article 20(2) is not yet agreed upon and Article 20(4) last subparagraph has to be revised (ADD 4 REV 1 to doc. 11027/1/12 REV 1).

7. On 16 October 2012, the General Affairs Council reached a third partial general approach on the following thematic blocs:
 - a) information and communication, technical assistance (ADD 1 REV 2 to doc. 14287/2/12 REV 2);
 - b) elements of the European territorial cooperation Regulation (ADD 2 REV 1 to doc. 14287/2/12 REV 2);
 - c) territorial development (ADD 3 REV 1 to doc. 14287/2/12 REV 2);
 - d) financial issues not in the MFF (non-transferability of resources, additionality and modulation of co-financing rates) (ADD 4 REV 2 to doc. 14287/2/12 REV 2);
 - e) country-specific recommendations (ADD 5 REV 1 to doc. 14287/2/12 REV 2);
 - f) management and control (ADD 6 REV 1 to doc. 14287/2/12 REV 2) and
 - g) indicators (ADD 7 REV 1 to doc. 14287/2/12 REV 2).

8. On 20 November 2012, the General Affairs Council reached a fourth partial general approach on the following thematic blocs:
 - a) financial management (ADD 1 REV 1 to doc. 15880/1/12 REV 1) and
 - b) common strategic framework (ADD 2 REV 1 to doc. 15880/1/12 REV 1).

9. On 20 February 2013, COREPER has examined the outstanding negotiating blocs on the above-mentioned regulations and the recitals to all these regulations, and a qualified majority for a partial general approach has been reached:
- recitals as set out in ADD 1 REV 1 to this note,
 - delegations of power, implementing, transitional and final provisions as set out in ADD 2 REV 1 and
 - pending articles as set out in ADD 3 REV 1.
10. For the EGTC amending Regulation as well COREPER has reached a qualified majority for a general approach as set out in ADD 4 REV 1.
11. The issues related to the compromise texts contained in Addendum 1-4 to this note can be summarised as follows:

Recitals:

The Working Party on Structural Measures has examined the recitals and aligned them, where necessary, to the amendments of the articles. There are no outstanding issues with regard to the recitals.

Delegations of power, implementing, transitional and final provisions:

When reviewing the provisions on the delegations of power as well as the implementing, transitional and final provisions of the Common Provisions, ERDF, ESF, ETC and Cohesion Fund Regulations the aim was to align the corresponding elements in all the 5 Regulations. This was especially relevant for the Articles on the exercise of delegation (Articles 142 CPR, 16 ESF and 29 ETC Regulations). In the ERDF Regulation there was no need anymore for the corresponding Article 13, which could consequently be deleted, while the proposal for the Cohesion Fund Regulation did not contain such a provision.

Concerning the ESF Regulation another major issue was Article 17 outlining the composition and tasks of the Committee based on Article 163 TFEU, which is now explicitly called ESF Committee.

Other pending articles:

Concerning the Common Provisions Regulation, several of the definitions in Article 2 as well as the Articles 6 (on compliance with applicable law) and 27 (on the participation of the European Investment Bank) still had to be examined. While Articles 6 and 27 did not necessitate further discussion, compromise texts were found on a number of definitions in Article 2. These include the definitions of "beneficiary", "public expenditure", "escrow account", "irregularity", "systemic irregularity", "relevant country-specific recommendations", "macro-regional strategy" and "sea-basin strategy".

Concerning the ERDF Regulation, Articles 1 (on the subject-matter) and 2 (on the tasks of the ERDF) were agreed upon.

The same applies to Article 1 of the Cohesion Fund Regulation (on the subject-matter).

Concerning the ESF Regulation, an agreement was reached on Articles 1 (on the subject-matter) and 2 (on the mission), while Articles 15, 15 a and 15 b (on policy based guarantees) did not find the necessary support among Member States and have therefore been deleted from the compromise text.

Finally concerning the ETC Regulation, Articles 4 (on resources for ETC) and 7 (on the content of cooperation programmes) were agreed upon and a compromise text was found on Article 24 a (on the participation of third countries in transnational and interregional cooperation programmes). This new Article 24 a replaced Article 28. The compromise text had to take into account that transnational and interregional cooperation in the context of ETC can not go beyond the legal basis of Article 178 TFEU.

EGTC amending Regulation:

When determining the proper legal basis for the proposal, particular consideration had to be given to the fact that the geographic scope of application of the proposal is proposed to be expanded towards overseas countries and territories (OCT) and third countries, while today an EGTC can be established only within the context of the EU. Since the special legislative procedure under the OCT legal basis (Article 203 TFEU) is incompatible with the ordinary legislative procedure stemming from the other legal bases, proposed by the Commission, it became necessary to look for a practical solution in the draft Council Decision on Overseas Association, which is currently also under negotiations in the Council, and to make the necessary consequential amendments to the proposal. The Presidency compromise text kept as the only sufficient legal basis article 175(3) TFEU, with the necessary consequential amendments in the related recitals. For the sake of legal certainty, several amendments have been introduced in those articles relating to the definition on applicable law. Since according to the proposal, in the future an EGTC (with third country and/or OCT participation) will be entitled to carry out also activities outside the territory of the Union, it was necessary to make a distinction between definitions on applicable law relevant to the acts of the statutory organs of an EGTC and EGTC activities within the EU as well as defining the applicable law relevant to the activities of an EGTC carried out partly or completely outside the Union. In this latter case, also in line with the principle of simplification and subsidiarity, the compromise text leaves it for the EGTC convention to lay down the necessary arrangements and, where appropriate, determining the applicable rules.

Concerning the tacit approval of the participation in an EGTC, a qualified majority has been reached for the compromise submitted by the Presidency. The issue was whether the participation of a prospective member in an EGTC and the EGTC convention shall be deemed to be approved by the respective Member State, under whose law the prospective member has been formed, if this Member State, after receiving a notification by the prospective member of the EGTC, does not raise any objection within the time limit of 6 months.