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from: Presidency
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Subject: Proposal for a Regulation of the European Parliament and of the Council on the
Fund for European Aid to the Most Deprived
- Progress Report

I. INTRODUCTION

On 24 October 2012, the Commission submitted a proposal for a Regulation on the Fund for European Aid to the Most Deprived (FEAD) to the Council and the European Parliament.

The general objective of the proposed instrument (which is expected to be operational on 1 January 2014) is to promote social cohesion by contributing to achieving the EU2020 poverty reduction headline target. More specifically, the instrument will aim to alleviate the worst forms of poverty by providing non-financial assistance to the most deprived persons.

The proposal is for a new Cohesion Policy instrument based on Article 175(3) TFEU, in order to fill a gap in the current social cohesion instruments, as the persons targeted under the proposed Fund are often too far from the labour market to benefit from the activation measures of the existing instruments, notably the European Social Fund (ESF) and the European Globalisation Fund (EGF).

The management of the proposed Fund, both at Member State and partner organisation levels, has been designed to be as simple and as flexible as possible. The support to the partner organisations can take form of food and/or goods, or of funding to purchase food and/or goods.

In February 2013, the European Council confirmed that "the support for aid for most deprived people will be EUR 2 500 million for the period 2014-2020 and will be taken from the ESF allocation".

The vote of the European Parliament on its mandate to enter informal trilogues (with a view to a possible first reading agreement) took place on 12 June 2013. The Employment Committee (EMPL) of the European Parliament had already accepted the proposed amendments put forward in the report of the Rapporteur, Emer Costello, on 20 May and the vote at plenary confirmed these amendments, including that the Fund should apply to all Member States.

The opinion of the Economic and Social Committee was issued at the 13-14 February 2013 plenary session. The Committee of Regions issued its opinion on the proposal at its plenary session of 11-12 April 2013.

CZ, DE, DK, NL, SE and UK have maintained reservations on the proposal.

In addition, the UK has maintained its parliamentary scrutiny reservation while a number of national parliaments have issued opinions on the proposal.

EE, EL, FR, CY and SK have maintained linguistic scrutiny reservations on the proposal, as has FI on Title V.

II. WORK DURING THE IRISH PRESIDENCY

The Council preparatory bodies have completed the examination of the entire text of the proposal. While substantial progress has been achieved under the Irish Presidency on many parts of the text, the Council is still to conclude on how to find a mechanism for participation that allows but does not force Member States to distribute food and goods to the most deprived.

(a) Participation of the Member States in the FEAD

During the discussions, it was clear that a number of Member States are opposed to this proposal, or at least mandatory participation in the FEAD. In their view the February European Council conclusions reflect a political agreement to use the 2.5 billion euro for the most deprived people, but not necessarily by a particular instrument. Most Member States do not agree with the above interpretation of the European Council conclusions, and some of them do not share the view that the Fund can be made optional. The counter argument made by these Member States, and the Commission, is that the conclusions were clearly related to this specific proposal as no other EU level instrument exists to deal with the most deprived.

A group of five Member States, considering that the political commitment of their Heads of State and Government can be achieved through a voluntary fund, suggested amendments to allow Member States achieve the objectives of addressing the most deprived by programming their allocation of funds through the ESF or, alternatively, distributing the 2.5 billion euro of FEAD funding among the participating countries, independent of the number of Member States which wish to use the fund. The total structural funds allocation of each Member State would remain unchanged irrespective of whether a Member State participates or not in the fund.

However, there were serious concerns on both of these approaches. On the one hand, it would not be legally sound to combine the ESF and FEAD Regulations as they have conflicting legal bases and any combination of those legal bases would create legal uncertainty. On the other hand, as some Member States would not use FEAD, a participating Member State might have to use a larger proportion of its structural funds under the FEAD in order to use the overall allocation of 2.5 billion euro.

The Presidency sought to establish whether, as an alternative to having to decide between voluntary and mandatory participation, there was scope to enhance the ‘internal flexibility’ of the Fund in order to make it more appealing to Member States for example by giving them more room to decide on whom to target, what geographical areas to focus on, and what products to distribute. However, it is clear from the discussions that, while potential does exist to increase the flexibility within the fund, this alone would not be enough to satisfy the concerns of some Member States.

Based on guidance from the Coreper and taking into consideration legal concerns, the Presidency then suggested a series of compromise proposals based on certain principles:

- Participation in the FEAD would be voluntary;
- The overall level of structural funds of a Member State would remain unaffected and, in particular, funding for FEAD would be earmarked from a Member States’ Structural Funds allocation;
- A Member State could opt in/out at the Programme review stage (in the middle of the programming cycle in 2016) without impacting on the allocation or programming of other Member States;
- The allocations would be indicatively calculated on the basis of the indicators set out in Article 6 (i.e. average population suffering from severe material deprivation and changes in the population living in households with very low work intensity);

- To ensure that a Member State would not be allocated disproportionately large FEAD funding, the Member State would have the flexibility to state, within a context of discussions with the Commission, the desired level of funding allocated to it;
- To compensate for expected low allocations to FEAD for the smallest Member States, a minimum level of funding to be allocated for them would be set.

The Presidency concludes, based on the outcome of Coreper and the subsequent Working Party meetings, that securing agreement on the proposal would only be possible if based on such a voluntary approach, providing Member States with flexibility with respect to the allocation of resources from their Structural Funds. In particular, the option for Member States to participate should not affect the programming of other Member States.

However, the precise manner in which the voluntary approach can be set out in a legal text to achieve legal certainty, and the issue of whether to allow Member States a further opportunity to opt in or out, has yet to be concluded. Moreover, the specific issue of the form of the legal instrument has to be addressed as Article 288(2) TFEU provides that a regulation shall have general application and it shall be binding in its entirety and directly applicable to all Member States.

(b) Issues concluded at the Working Party level

The Presidency concludes that, besides the issue discussed above under point (a), a large part of the text of the Regulation has been discussed exhaustively at the Working Party level. In particular, the objectives and the scope of the Regulation have been discussed and agreed by the delegations. Agreement has also been reached on the provisions relating to preparation and amendment of Operational Programmes, exchange of experience and consultation, monitoring and evaluation, information and communication, and financial support from the Fund.

A number of delegations have stressed the importance of securing the transition from the current Food Aid Programme (ending in December 2013) and the proposal under discussion and therefore the drafting now includes amendments to Article 20(1), on eligibility of expenditure that is incurred and paid after the operational programme has been submitted even if that programme would not yet have been adopted. Final agreement on the provisions relating to management and control has been left over until final agreement on the Common Provision Regulation, from which the management and control provisions of FEAD have largely been derived.

III. NEXT STEPS

The FEAD should be operational at the beginning of 2014. As the European Parliament's position is now available, the next steps will include examining it.

Therefore, urgent support will be required under the future Lithuanian Presidency in the continuation of the work and finding solutions, in particular specifying the precise manner in which the voluntary option could be set out; this might require choosing a form of a legal instrument other than a regulation, possibly a decision.

Together with the European Parliament, an early agreement on this important file is the only option to respect the deadline.