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from : Presidency
to : Permanent Representatives Committee (part 2)/Council

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No. Cion prop.: COM(2012) 496 final, COM(2011) 611 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 and

- 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.

2. On 14 March 2012, the Commission submitted corrigenda for the above mentioned proposals: the Common Provisions Regulation (doc. 15243/2/11 REV 2) and the ETC Regulation (doc. 15253/1/11 REV 1).
3. On 11 September 2012, the Commission submitted an amended proposal for the Common Provisions Regulation (doc. 13730/12) 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 and the ETC 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);
 - 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. Following the discussion in COREPER on 14 November 2012 and subsequent modifications of the Presidency compromise texts the following negotiating blocs are now at an advanced stage where agreement on the basis of a partial general approach can be reached:
 - financial management and
 - common strategic framework.

9. The text of these thematic blocs is set out in Addenda 1-2 REV 1 to this note and can be summarised as follows:

Financial management

- a number of adjustments have been incorporated in order to align the legal text with the provisions of the Financial Regulation adopted on 25 October 2012 and in particular the provisions related to the examination and acceptance of accounts;
- simplifying amendments regarding the content of interim payments;
- adjustments to the provisions for applying financial corrections upon breach of applicable law to ensure that financial corrections are held only to expenditure which has been declared to the Commission as well as providing more clarity and legal certainty for the conditions to be met;
- including additional safeguards for Member States when financial corrections are applied regarding the methodology for applying flat rate or extrapolated corrections;
- providing legal certainty regarding the procedure in cases when the Commission is not able to accept the accounts and documents submitted by Member States;
- introducing provisions to safeguard that the procedure of examination and acceptance of accounts will not interrupt the process of applications of interim payments and will not lead to suspension of payments;
- reducing the time period, from 3 to 2 years, for the obligatory availability of documents on operations for which the total eligible expenditure exceeds EUR 5 000 000;
- adjustments to the provisions regarding financial corrections which reduce support from the Funds (net corrections) in order to ensure legal certainty and clarity in particular concerning the conditions for applying such corrections as well as some factors to be taken into account when such corrections are applied. Furthermore a provision for delegated acts in relation to the assessment criteria of serious deficiencies and the main types of such deficiencies is included.

Common Strategic Framework

- with its initial proposal for the Common Provisions Regulation, presented on 6 October 2011 (document 15243/11), the Commission envisaged the Common Strategic Framework (CSF) to be adopted as a delegated act. The Council as part of the partial general approach reached on 24 April 2012 on the programming bloc of the Common Provisions Regulation (document 8207/12 ADD 1 REV 3) considers the CSF an essential part of the strategic programming which should therefore be in its entirety in an annex to the Common Provisions Regulation;
- on 11 September 2012, the Commission presented an amended proposal of the Common Provisions Regulation related to the CSF, integrating it partly into an annex of the Common Provisions Regulation, but still envisaging to adopt some elements as a delegated act;
- in line with this presumption, adjustments were introduced to the relevant articles to align the amended proposal of the Commission to the partial general approach of 24 April 2012;
- introduction of additional provisions clarifying that the strategic orientation provided in the CSF shall be established with the purpose, the scope and rules governing the operation of each CSF Fund as defined in the regulatory framework;
- adjustments to CSF to align its provisions to the relevant Articles of the Common Provisions Regulation and in particular to incorporate it in its entirety in an Annex to the Common Provisions Regulations.

10. Similarly to the previous partial general approaches reached at the General Affairs Council on 24 April, 26 June 2012 and 16 October, it should be underlined that any preliminary agreement on these thematic blocs has to be viewed in the overall context of the negotiations on the Cohesion Policy legislative package and treated on the basis of the principle that "nothing is agreed until everything is agreed". Namely, the elements for a partial general approach submitted herewith do not prejudge the outcome of negotiations on other negotiation blocs or the multiannual financial framework, while necessary consequential amendments in the blocs submitted herewith might be necessary as a result of the negotiations on these other blocs as well as the multiannual financial framework. It is also noted that any agreement regarding annual pre-financing will be reviewed at a later stage following an agreement on the MFF.
11. On that basis the Council is invited :
- to agree on the following elements for a partial general approach concerning:
 - a) Financial Management, as set out in ADD 1 REV 1 to this note and
 - b) Common Strategic Framework, as set out in ADD 2 REV 1;
 - to decide to enter into its minutes the statements set out in ADD 3 REV 2 to this note.