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Subject : Proposal for a Council Regulation establishing a Cohesion Fund
 - Presidency compromise

Delegations will find in Annex to this note the text of the Presidency compromise on the draft Cohesion Fund Regulation based on the discussions held at the Structural Actions Working Party on 14 July 2005.

Proposal for a

COUNCIL REGULATION

establishing a Cohesion Fund

THE COUNCIL OF THE EUROPEAN,

Having regard to the Treaty establishing the European Community, and in particular Article 161(2) thereof,

Having regard to the proposal from the Commission¹,

Having regard to the assent of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Whereas:

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

- (1) Regulation (EC) No [...] laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund¹, establishes the framework for the action of the Structural Funds and the Cohesion Fund. It fixes, in particular, the objectives, the principles² and the rules concerning partnership, programming, evaluation and management. It is therefore necessary to specify the mission of the Cohesion Fund in relation to this new framework and to the purpose assigned to it in the Treaty and to repeal, for the sake of clarity, Council Regulation (EC) No 1164/94 of 16 May 1994 establishing the Cohesion Fund³.
- (2) Trans-European network projects financed from the Cohesion Fund must fit the guidelines for these networks adopted by the Council and the European Parliament. In order to concentrate the efforts, priority shall be given to projects of European interest as defined in Decision No 1692/96/EC of the European Parliament and the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network⁴.
- (3) The Community may, through the Cohesion Fund, contribute to action in pursuit of the Community's environmental [...] objectives specified in Articles **6 and** 174 of the Treaty.
[...]

[...]

¹ OJ L [...], [...], p. [...].

² A new recital could be added to clarify that the Cohesion Fund may fund the technical assistance of Member States, although it is stated clearly in Article 44 of the draft General Regulation. DE opposed to this new recital as it is already mentioned in the General Regulation.

³ OJ L 130 of 25.5.1994, p. 1, Regulation as last modified by the Accession Act of 2003.

⁴ OJ L 228 of 9.9.1996, p. 1 **as amended by Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004, OJ L 167 of 30.04.2004, p. 1.**

- (4) Regulation (EC) No [...] provides that eligibility of expenditure is to be established at national level, with certain exceptions, for which it is necessary to lay down specific provisions. The exceptions concerning the Cohesion Fund should therefore be laid down.
- (5) Conditionality provisions in the granting of financial assistance will continue to apply in conjunction with the fulfilment of the conditions of economic convergence as set out in Article 99 of the Treaty and the need for sound government finances. In this respect, Member States **having adopted the euro are to implement stability programmes and Member States not having adopted the euro convergence programmes**, as defined in Council Regulation (EC) n° 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, leading to the **avoidance of excessive government deficits** referred to in Article 104 of the Treaty¹. **At the same time, the conditionality provisions shall not apply to commitments that have already been made at the time of suspension.**

HAS ADOPTED THIS REGULATION:

¹ As amended by Council Regulation (EC) No 1055/2005 of 27 June 2005 amending Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies. OJ L 174 of 7.07.2005, p. 1.

Article 1

Creation and purpose of the Cohesion Fund

1. A Cohesion Fund (hereinafter: the Fund) is hereby set up for the purpose of strengthening the economic **and** social [...] ¹ cohesion of the Community in the interests of promoting sustainable development.

[...]

2. The Fund is governed by the provisions of Regulation (EC) No (...) and by the provisions of this Regulation.

Article 2

Scope of assistance²

1. Assistance from the Fund shall be given **to actions** in the following areas ensuring an appropriate balance and according to the investment and infrastructure needs specific to each Member State receiving assistance:
 - a) trans-European transport networks, in particular priority projects of European interest as identified by Decision No 1692/96/EC³

¹ CY and MT suggested adding "*and territorial*".

² Article 5 (3) of the draft General Regulation would be modified to envisage a mid-term review of the Cohesion Fund in 2010. CY opposed to a mid-term review.

³ p.m.as amended by Decision No 884/2004/EC of the European Parliament and of the Council of 29 April 2004, OJ L 167 of 30.04.2004, p. 1. HU and LV suggested adding "*and the development of main road networks, secondary roads that link to the TENs*". In this context, LU reminded Article 154 of the Treaty.

- b) **environment** [...] falling within the priorities assigned to the Community environmental protection policy under the policy and action programme on the environment.

In this context¹, the Fund may also intervene in areas related to sustainable development which clearly² present environmental benefits, namely³ energy efficiency and renewable energy and, in the transport sector⁴ outside the trans-European networks,⁵ rail, river, [...] sea [...]⁶ transport, intermodal transport systems and their interoperability, management of road, sea and air traffic, clean urban transport and public transport⁷.

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2. **The appropriate balance of [...] assistance shall be agreed in partnership between Member States and the Commission**⁹.

¹ PL suggested deleting "**In this context**".

² EL suggested deleting "clearly".

³ EL and PL suggested replacing "namely" by "*such as*" as the French and Polish versions use "such as".

⁴ PT considered that ports and airports in the outermost regions should be covered by this provision.

⁵ CY, HU and MT suggested adding "*road*".

⁶ EL, ES and PT suggested adding "*air*".

⁷ DE and IT suggested deleting this subparagraph. HU suggested an extension of the proposed scope to, for example for HU: energy conservation, "acquis" related investment or interoperability measures. SK suggested making it a separate paragraph and modifying the drafting as follows: "*In the context of areas covered by a) and b), the Funds' s assistance may*".

⁸ CZ suggested adding a new paragraph which would read as follows: "*In accordance with article 44 of Regulation N° (...) [laying down general provisions on the Structural Funds and the Cohesion Fund], the Cohesion Fund may finance the technical assistance of Member States.*".

⁹ CZ and EE suggested adding "*... and shall be set according to the needs of the Member States.*".

Article 3

Rules on eligibility of expenditure

The following expenditure shall be ineligible:

- 1) [VAT¹, except for non recoverable VAT, when it is genuinely and definitively borne by the beneficiaries other than non taxable persons foreseen at article 4(5), 1st subparagraph of the 6th Council VAT Directive (States, regional and local government authorities and other bodies governed by public law)]
- 2) interest on debt;
- 3) the purchase of land for an amount exceeding 10% of the total eligible expenditure for the operation concerned;²
- 4) [housing³]
- 5) decommissioning of nuclear power stations.

¹ CZ, EE, EL, CY, LT, LV, HU, MT, AT, PL, PT, SI, SK and FI suggested replacing the text by "*reimbursable VAT*". FR opposed to the eligibility of VAT.

² HU and PL suggested aligning this provision to the corresponding one from the ERDF Regulation, i.e. allowing in exceptional cases higher threshold (40% for example for nature protection).

³ HU suggested adding "*excluding energy-efficient constructions*".

Article 4¹

Conditions applying to access to Fund assistance²

1. Assistance from the Cohesion Fund shall be conditional on the following rules.
2. If the Council:
 - a) has **decided** in accordance with Article 104(6) EC that excessive government deficit exists in a beneficiary Member State, and
 - b) has **established** in accordance with Article 104(8) EC that the Member State concerned has not taken effective action in response to a Council Recommendation issued under Article 104(7) EC [...],

it **may decide** to suspend either the totality or part of the **commitments** from the Fund for the Member State concerned with effect from 1st January of the year following the decision **to suspend**. [...]³

¹ LV entered a scrutiny reservation.

² The new drafting of the Article reflects the EFC opinion (Doc. 6869/05). CZ and HU expressed reservations regarding the close link between the Excessive deficit procedure (EDP), the Treaty Article 104 and the Cohesion Fund, since this would imply the possible suspension of Cohesion Funds as an effective sanction in the EDP that would apply only to the Cohesion countries.

³ CZ, MT, PL and SK suggested reverting back to the previous text, i.e. “*The suspension shall concern commitments, except for the operations already approved*”.

3. [...] **If the Council** establishes that the Member State concerned has taken the necessary corrective action, **it shall decide, without delay, to lift the suspension of the commitments concerned. At the same time, the budgetary authority shall decide, on a proposal from the Commission¹, to re-budget the suspended commitment in accordance with the procedure set out in the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure².**
4. The Council **shall** take the decisions referred to in paragraphs 2 and 3 on a qualified majority on a proposal from the Commission.

¹ PT wondered about the deadline for the Commission to make a proposal to re-budget the commitments.

² P.M. Paragraph 18 of the draft Interinstitutional Agreement (doc. 11745/04) : *"The Council can decide, at the same time this suspension is lifted, on a transfer of suspended commitments to the following years. Suspended commitments of year n cannot be re-budgeted beyond year n+1. The Council decides on a proposal from the Commission."* .

Article 5

Transitional provisions¹

1. This Regulation shall not affect either the continuation or the modification, including the total or partial cancellation, of operations approved by the Commission on the basis of Regulation EC No 1164/94 [...]².
2. Applications ³ **for major projects made to the Commission** under Regulation (EC) No 1164/94 shall remain valid⁴ **provided such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation and Articles 38 to 40 of Regulation (EC) (...) [General Regulation] within not more than two⁵ months as of 1 January 2007⁶.**

¹ EL, LT, PT and SK indicated the need of more precise rules concerning the transitional period. EE and EL entered a reservation on the new wording. SK sought for clarification as to the drafting. PL and SK suggested adding a new paragraph:

2. *If for an operation approved under Regulation 1164/94 the amounts committed until 31 December 2006 are below the maximum amount of assistance as set in a granting decision for the operation, the Member State concerned shall include continuation of such operation in an operational programme for the Cohesion Fund. The amounts for continuation of such operations shall be excluded from the amounts subject to automatic decommitment under Art. 92 of Regulation No [...].*

² ES and FR suggested adding (as in the ERDF and ESF Regulations) “*which shall consequently apply thereafter to that assistance or projects until their closure*”. LU suggested deleting this paragraph as it was already covered by Article 106 (1) of the draft General Regulation.

³ HU and CION suggested adding “*for a Cohesion Fund contribution*”.

⁴ EL, HU, PL, PT and SK suggested adding “*and shall be subject to the rules concerning the starting point of eligibility of expenditure laid down in that Regulation*”.

⁵ PL suggested replacing “two” by “three”.

⁶ EL suggested deleting “**provided such applications are supplemented, where necessary, so as to comply with the requirements of this Regulation within not more than two⁶ months as of 1 January 2007**” and preferred the Commission proposal text.

Article 6

Repeal¹

Without prejudice to the provisions laid down in Article 106(1) of Regulation (EC) No (...) [General Regulation] and Article 5 of this Regulation², Regulation (EC) No 1164/94 is hereby repealed with effect from 1 January 2007³.

References to Regulation (EC) No 1164/94 shall be construed as reference to this Regulation.⁴

Article 7

Review

The Council shall review this Regulation by 31 December 2013 at the latest in accordance with Article 161 of the Treaty.

¹ EL, HU and SI proposed considering as eligible expenditure all project preparation costs occurred in relation to a project starting after 1st January 2007. As a second best option, they proposed that the current rule should be maintained and the eligibility period should start with the presentation of the OP to the Commission.

² LU suggested removing the reference to Article 5.

³ PT suggested adding "*excepting the effects produced on projects approved before 31 December 2006.*"

⁴ CZ suggested introducing an annex containing a correlation table with Regulation 1164/94.

Article 8
Entry into force

This Regulation shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2007.¹

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...].

For the Council
The President
[...]

¹ CION suggested deleting "It shall apply from 1 January 2007.".