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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006

{SEC(2011)1138}

{SEC(2011) 1139}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 29 June 2011, the Commission adopted a proposal for the next multi-annual financial framework for the period 2014-2020: a budget for delivering the Europe 2020 strategy. In its proposal, the Commission decided that cohesion policy should remain an essential element of the next financial package and underlined its pivotal role in delivering the Europe 2020 strategy.

The Commission therefore proposed a number of important changes to the way cohesion policy is designed and implemented. Concentrating funding on a smaller number of priorities better linked to the Europe 2020 Strategy, focusing on results, monitoring progress towards agreed objectives, increasing the use of conditionalities and simplifying the delivery are among the major hallmarks of the proposal.

This Regulation sets out the provisions governing the Cohesion Fund, and repealing Regulation (EC) No 1084/2006. It draws on the work undertaken since the publication of the Fourth Cohesion Report in May 2007 which outlined the main challenges facing regions in the next decades and launched the debate on the future cohesion policy. On 9 November 2010, the Commission adopted the Fifth Cohesion Report which provided an analysis of social and economic trends and outlined orientations for the future cohesion policy.

Cohesion policy is an important expression of solidarity with the poorer and weakest regions of the EU – but it is more than that. One of the greatest successes of the EU has been its capacity to raise living standards for all its citizens. It does this not only by helping poorer Member States and regions to develop and grow but also through its role in the integration of the Single Market whose size delivers markets and economies of scale to all parts of the EU, rich and poor, big and small. The Commission's evaluation of past cohesion policy spending has shown many examples of added value and of growth and job creating investment that could not have happened without the support of the EU budget. However, the results also show the effects of dispersion and lack of prioritisation. At a time when public money is scarce and when growth enhancing investment is more needed than ever, the Commission has decided to propose important changes to cohesion policy.

The Cohesion Fund helps Member States whose GNI per inhabitant is less than 90% of the EU27 average in making investments in TEN-T transport networks and the environment. Part of the Cohesion Fund allocation (€10 billion) will be ring-fenced to finance core transport networks under the "Connecting Europe" Facility. The Cohesion Fund can also support projects related to energy, as long as they clearly present a benefit to the environment, for example by promoting energy efficiency and the use of renewable energy.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. Consultation and expert advice

Results of the public consultations of 5th Progress Report on Economic and Social Cohesion; the EU Budget Review¹, the proposals for the multi-annual financial framework², the Fifth Cohesion Report³ and consultations following the adoption of the report have all been considered when making the proposals.

The public consultation on the Conclusions of the Fifth Cohesion Report was held between 12 November 2010 and 31 January 2011. A total of 444 contributions were received. Respondents included Member States, regional and local authorities, social partners, European interest organisations, non-governmental organisations, citizens and other stakeholders. The public consultation asked a series of questions about the future of cohesion policy. A summary of the results was published on 13 May 2011⁴.

A public consultation was also held on the future Trans-European Transport Network from 4 May 2010 to 15 September 2010. The majority of stakeholders, especially at Member State and regional level, support better coordination between different financial instruments that fund TEN-T at EU level, namely cohesion policy, research and innovation funding, the TEN-T programme and the EIB's interventions.

The results of the ex-post evaluations carried out on the 2000-2006 programmes; and a broad range of studies and expert advice were used as input. Expert advice was also provided through the High Level Group reflecting on future Cohesion Policy, composed of experts from national administrations, with 10 meetings held between 2009 and 2011.

2.2. Impact assessment

Options were assessed in particular in relation to the Cohesion Fund contribution to investing in basic infrastructure in transport and environment. The Cohesion Fund is aimed at supporting projects in Trans-European transport networks in accordance with Articles 171 and 177 of the Treaty on the Functioning of the European Union.

Various ways of making funding conditional on a sound macro-fiscal framework were assessed, including the status quo, with a weak ex-post conditionality which has never been applied, a strengthened *ex post* conditionality, and *ex ante* conditionality, which would require the fulfilment of preconditions before the adoption of the programmes.

An evolution of the current system best fulfils the criteria of ownership, transparency and predictability, while at the same time ensuring that the effectiveness of growth-enhancing investments is not undermined by the pursuit of unsound fiscal policies. Such a procedure implies suspension of part or all of commitments in the case of repeated breaches, and allows some flexibility, but this is limited to exceptional economic circumstances. It also ensures full alignment between the provisions for macro-fiscal conditionality of the Cohesion fund/Structural Funds and the new rules of budgetary surveillance of the Stability and Growth Pact.

¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the national parliaments: The EU Budget Review, COM(2010) 700 final, 19.10.2010.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Budget for Europe 2020, COM(2011) 500 final, 29.6.2011.

³ 5th Report on Economic, Social and Territorial Cohesion, November 2010.

⁴ Commission Staff Working Paper: Results of the public consultation on the conclusions of the fifth report on economic, social and territorial cohesion, SEC(2011) 590 final, 13.5.2011.

3. LEGAL ELEMENTS OF THE PROPOSAL

European regional policy has an important role to play in mobilising local assets and focusing on the development of endogenous potential.

Article 174 of the Treaty on the Functioning of the European Union (TFEU) calls for action by the European Union to strengthen its economic, social and territorial cohesion and promote overall harmonious development by reducing disparities between the levels of development of regions and promoting development in least favoured regions.

The TFEU states that the Cohesion Fund shall be set up with the aim of contributing to projects in the fields of environment and trans-European networks in the area of transport infrastructure. Article 192 of the TFEU also refers to the use of the Cohesion Fund for environment in cases where the polluter pays principle cannot be applied due to disproportionate costs for the public authorities of a Member State. Protocol No 28 to the TFEU states that the Cohesion Fund will provide support to projects in Member States with a per capita GNI of less than 90% of the Union average.

The timing of the review of EU funding to promote cohesion is linked to the proposal for a new Multiannual Financial Framework, as contained in the Commission Work Programme.

As the EU Budget Review has highlighted, the "EU budget should be used to finance EU public goods, actions that Member States and regions cannot finance themselves, or where it can secure better results".⁵ The legal proposal will respect the principle of subsidiarity as the tasks of the ERDF are set out in the Treaty and the policy is implemented in accordance with the principle of shared management and respecting the institutional competencies of Member States and regions.

The legislative instrument, and the type of measure (i.e. funding) are both defined in the TFEU, which provides the legal basis for the Cohesion Fund, and states that the tasks, priority objectives and the organisation of the fund shall be defined in regulations.

4. BUDGETARY IMPLICATION

The Commission's proposal for a Multi-Annual Financial Framework includes a proposal of EUR 376 billion for the period 2014-2020.

Proposed budget 2014-2020	EUR billion
Convergence regions	162,6
Transition regions	39
Competitiveness regions	53,1
Territorial cooperation	11,7
Cohesion fund	68,7
Extra allocation for outermost and sparsely populated regions	0,926
Connecting Europe Facility for transport, energy and ICT	EUR 40 billion (with an additional EUR 10 billion ring fenced inside the Cohesion Fund)

⁵ COM(2010) 700 final, 19.10.2010.

**All figures in constant 2011 prices*

5. SUMMARY OF CONTENT OF THE PROPOSED REGULATION

The proposed Regulation determines the scope of intervention of the Cohesion Fund. It includes an article on scope defining the general areas for intervention within the area of transport and environment. The scope of intervention is also defined by a negative list of activities which will not be eligible for support, and a list of investment priorities.

In the field of environment, the Cohesion Fund will support investment in climate change adaptation and risk prevention, investment in the water and waste sectors and the urban environment. In line with the Commission's proposals on the Multi-Annual Financial Framework, investment in energy is also eligible for support, provided it has positive environmental benefits. Therefore investment in energy efficiency and renewable energy are also supported.

In the field of transport the Cohesion Fund will contribute to investments in the Trans-European Transport Network, as well as low-carbon transport systems and urban transport.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second subparagraph of Article 177 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Article 174 of the Treaty provides that the Union should develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion. The Cohesion Fund should therefore provide a financial contribution to projects in the field of the environment and to trans-European networks in the area of transport infrastructure.
- (2) Regulation (EU) No [...]/2012 of [...] 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 1083/2006⁸ [Common Provisions Regulation - CPR] establishes a new framework for the action of the Structural Funds and the Cohesion Fund. It is necessary to specify the objectives of the Cohesion Fund in relation to the new framework for its action and in relation to the purpose assigned to it in the Treaty.

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ L , , p. .

- (3) The Union may, through the Cohesion Fund, contribute to actions in pursuit of the Union's environmental objectives specified in Articles 11 and 191 of the Treaty.
- (4) Trans-European transport network projects financed by the Cohesion Fund are to comply with the guidelines adopted by Decision No 661/2010/EU of the European Parliament and of the Council of 7 July 2010 on Union guidelines for the development of the trans-European transport network⁹. In order to concentrate efforts, priority should be given to projects of common interest as defined in that Decision.
- (5) Specific provisions concerning the type of activities which may be supported by the Cohesion Fund under the thematic objectives defined in Regulation (EU) No [...] /2012 [CPR] should be laid down. At the same time, expenditure outside the scope of the Cohesion Fund should be defined and clarified, including as regards the reduction of greenhouse gas emissions in installations falling under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC¹⁰.
- (6) In order to address the specific needs of the Cohesion Fund, and in line with the Europe 2020 strategy that cohesion policy should support the need to deliver smart, sustainable and inclusive growth¹¹, it is necessary to set out investment priorities within the scope of the thematic objectives laid down in Regulation (EU) No [...] /2012 [CPR].
- (7) A common set of indicators to assess progress of programme implementation should be set out before the Member States draft their operational programmes. These indicators should be complemented by programme-specific indicators.
- (8) This Regulation replaces Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing the Cohesion Fund and repealing Regulation (EC) No 1164/94¹². In the interest of clarity, Regulation (EC) No 1084/2006 should therefore be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject-matter

This Regulation establishes the tasks of the Cohesion Fund and the scope of its support with regard to the Investment for growth and jobs goal referred to in Article 81 of Regulation (EU) No []/2012 [CPR].

⁹ OJ L 204, 5.8.2010, p. 1.

¹⁰ OJ L 275, 25.10.2003, p. 32.

¹¹ Communication from the Commission: Europe 2020 - A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final, 3.3.2010.

¹² OJ L 210, 31.7.2006, p. 79.

Article 2
Scope of support from the Cohesion Fund

1. The Cohesion Fund shall, while ensuring an appropriate balance and according to the investment and infrastructure needs specific to each Member State, support:
 - (a) investments in the environment, including areas related to sustainable development and energy which present environmental benefits;
 - (b) trans-European networks in the area of transport infrastructure, in compliance with the guidelines adopted by Decision No 661/2010/EU;
 - (c) technical assistance.
2. The Cohesion Fund shall not support:
 - (a) the decommissioning of nuclear power stations;
 - (b) the reduction of greenhouse gas emissions in installations falling under Directive 2003/87/EC;
 - (c) housing.

Article 3
Investment priorities

In accordance with Article 16 of Regulation (EU) No [...]/2012 [CPR], the Cohesion Fund shall support the following investment priorities within the thematic objectives set out in Article 9 of Regulation (EU) No [...]/2012 [CPR]:

- (a) supporting the shift towards a low-carbon economy in all sectors by:
 - (i) promoting the production and distribution of renewable energy sources;
 - (ii) promoting energy efficiency and renewable energy use in small and medium-sized enterprises;
 - (iii) supporting energy efficiency and renewable energy use in public infrastructures;
 - (iv) developing smart distribution systems at low voltage levels ;
 - (v) promoting low-carbon strategies for urban areas;
- (b) promoting climate change adaptation, risk prevention and management by:
 - (i) supporting dedicated investment for adaptation to climate change;
 - (ii) promoting investment to address specific risks, ensuring disaster resilience and developing disaster management systems;
- (c) protecting the environment and promoting resource efficiency by:

- (i) addressing the significant needs for investment in the waste sector to meet the requirements of the Union's environmental *acquis*;
 - (ii) addressing the significant needs for investment in the water sector to meet the requirements of the Union's environmental *acquis*;
 - (iii) protecting and restoring biodiversity, including through green infrastructures;
 - (iv) improving the urban environment, including regeneration of brownfield sites and reduction of air pollution.
- (d) promoting sustainable transport and removing bottlenecks in key network infrastructures, by:
- (i) supporting a multi-modal Single European Transport Area by investing in the Trans-European Transport Network;
 - (ii) developing environment-friendly and low-carbon transport systems including promoting sustainable urban mobility;
 - (iii) developing comprehensive, high quality and interoperable railway systems;
- (e) enhancing institutional capacity and an efficient public administration by strengthening of institutional capacity and the efficiency of public administrations and public services related to implementation of the Cohesion Fund.

Article 4 **Indicators**

1. Common indicators, as set out in the Annex to this Regulation, shall be used where relevant and in accordance with Article 24(3) of Regulation (EU) No [...] /2012 [CPR]. For common indicators, baselines shall be set at zero and cumulative targets shall be set for 2022.
2. For programme-specific output indicators, baselines shall be set at zero and cumulative targets shall be fixed for 2022.
3. For programme-specific result indicators, baselines shall use the latest available data and targets shall be fixed for 2022, but may be expressed in quantitative or qualitative terms.

Article 5 **Transitional provisions**

1. This Regulation shall not affect either the continuation or modification, including the total or partial cancellation, of assistance approved by the Commission on the basis of Regulation (EC) No 1084/2006 or any other legislation applying to that assistance on 31 December 2013, which shall consequently apply thereafter to that assistance or the projects concerned until their closure.

2. Applications to receive assistance made under Regulation (EC) No 1084/2006 shall remain valid.

Article 6

Repeal

Regulation (EC) No 1084/2006 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

Article 7

Review

The European Parliament and the Council shall review this Regulation by 31 December 2022, in accordance with Article 177 of the Treaty.

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*.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

List of Common Indicators for the Cohesion Fund

	UNIT	NAME
Environment		
Solid waste	tons	Additional waste recycling capacity
Water supply	persons	Additional population served by improved water supply
	m ³	Estimated reduction of leakage in water distribution network
Wastewater treatment	population equivalent	Additional population served by improved wastewater treatment
Risk prevention and management	persons	Population benefiting from flood protection measures
	persons	Population benefiting from forest fire protection and other protection measures
Land rehabilitation	hectares	Total surface area of rehabilitated land
Soil sealing	hectares	Change in land sealed due to development
Nature and biodiversity	hectares	Surface area of habitats in better conservation status
Energy and climate change		
Renewables	MW	Additional capacity of renewable energy production
Energy efficiency	households	Number of households with improved energy consumption classification
	kWh/year	Decrease of primary energy consumption of public buildings
	users	Number of additional energy users connected to smart grids

GHG reduction	tons of CO ₂ eq	Estimated decrease of GHG in CO ₂ equivalents
Transport		
Railway	km	Total length of new railway line
	km	Total length of reconstructed or upgraded railway line
Roads	km	Total length of newly built roads
	km	Total length of reconstructed or upgraded roads
Urban transport	passenger trips	Increase of passenger trips using supported urban transport service
Inland waterways	tonne-km	Increase of cargo transported on improved inland waterways