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TECHNICAL NOTE FROM THE CPMR GENERAL SECRETARIAT

ACHIEVEMENTS OF THE CPMR IN THE ESI FUNDS NEGOTIATIONS

1. Introduction

The purpose of this note is to provide a comprehensive assessment of the CPMR achievements during the negotiations on the ESI Funds regulations: the 2014-20 Cohesion Policy package. This note looks specifically at how the points put forward by the CPMR have been taken on board by the Council and the European Parliament in the final agreement that was reached in November 2013 after more than two years of tough 'trilogue' negotiations.

The CPMR has been involved as a key stakeholder during the whole process of ESI funds reform which started back in 2011 with the publication of the 5th Report on Economic, Social and Territorial Cohesion drafted by Mr Fabrizio Barca. Many of the novelties suggested in this study and the CPMR were taken over by the Commission in its legislative proposal for the new ESI funds regulations which were presented in October 2011. The CPMR very much welcomed the new provisions concerning the pooling of the ESI funds via the integrated approach and the Common Strategic Framework, the strengthened partnership arrangements and the new set of territorial development instruments.

By conducting an in-depth analysis of the legislative proposals, the CPMR identified other areas of concern for its member regions in the Commission's original Cohesion Policy package, which were captured in the CPMR policy position on the package adopted in February 2012:

- Prescriptive architecture of the new thematic concentration framework,
- Insufficient consideration of specific territorial features and specific needs of regions with severe and permanent natural or demographic handicaps
- Absence of a review mechanism to adapt the level of funding to changing growth conditions
- Lack of latest data on regional growth to take into account the effect of the crisis
- Unclear attempt to link Cohesion Policy to economic governance via the use of conditionalities

2. State of play

Following the entry into force of the new regulation on 17th December 2013, Member States and regions are now preparing Partnership agreements and Operational Programmes which need to be submitted by 22nd April 2014. In the meantime, the Commission is analysing the official Partnership Agreements received so far from 15 Member States. The Partnership Agreements should provide an outline of the investment plans for the ESI funds in the 2014-2020 programming period. The Commission has underlined that a strategic approach to the use of the ESI Funds is critical and quality will be considered more important than submission speed.

There are already concerns that many of the Partnership Agreements already submitted lack an integrated approach, that thematic concentration provisions have been artificially implemented and the ex-ante conditionalities are not fully respected.

2.1. Partnership Agreements procedure

The new package establishes that each Member State should submit its Partnership Agreement to the Commission within 4 months from the entry into force of the Regulation (on 22nd April at the latest). The Commission will have 3 months since the date of submission of the Partnership Agreement to make observations and should adopt the Partnership Agreement within 4 months from its submission, provided that the Member State has adequately taken into account the observations made by the Commission. This means that as a general rule, Partnership Agreements should be adopted by the end of August 2014 at latest.

2.2. Operational Programmes procedure

According to the new rules, Operational Programmes should be submitted at the latest 3 months following the submission of the Partnership Agreement. The Commission can make observations within 3 months of the date of submission of the Operational Programme, whereas the adoption should take place no later than 6 months from the date of its submission, provided that the Member State has adequately taken into account the Commission observations. Therefore, all Operational Programmes should be adopted in principle by the end of January 2015 at latest.

3. What has the CPMR influenced in the ESI Funds regulations?

A number of key proposals from the CPMR are reflected in the final text of the ESI funds regulations. These include the following:

- Extension of scope of ERDF for more developed regions to cover all types of infrastructure
- Specific arguments on thematic concentration for ERDF funding in more developed regions and transition regions
- The recognition of specific territorial features in the overall package
- Ex ante conditionalities to apply only when relevant to structural funds
- Structural funds allocation to recognise specific needs of regions with severe and permanent natural or demographic handicaps
- Recognition of transitions regions for the thematic concentration of priorities
- Inclusion of a review clause and modification of the reference period

3.1. Thematic concentration

Commission proposal – 2011	Final text – 2013	CPMR position
The thematic concentration provisions foresee that minimum shares of ERDF and ESF should be earmarked to finance interventions under three predefined thematic objectives.	Some flexibility has been introduced by adding a fourth thematic priority. Furthermore, ERDF can now be spent on activities supporting sustainable tourism, culture and natural heritage, including the conversion of declining industrial regions.	CPMR has supported the Council position on extending the scope of ERDF to sustainable tourism and proposed to introduce other thematic priorities in the obligatory earmarking.
No investment in infrastructure for more developed regions.	Extension of the scope of the ERDF in more developed regions to cover all types of infrastructure.	Infrastructure investments should be possible for all category of regions.
Transition had the same constraints of more developed regions in terms of ERDF earmarking.	Recognition of transition regions in the ERDF regulation, addition of the following text: "at least 60 % of the total ERDF resources at national level shall be allocated to four of the thematic objectives"	Transition regions should not suffer from the constraints as more developed regions in terms of thematic concentration.
Minimum shares of ERDF and ESF to be determined at national level.	Minimum share for ESF is determined in relation to the employment rate at national level. Member States with a lower employment rate need to increase their share of ESF compared to the 2007 – 2013 period. The share of ESF (with respect to the ERDF) at Member State level cannot exceed 52%.	Minimum shares for ESF and ERDF should be determined at regional level and in certain cases it may more relevant to state indicative rather than compulsory shares. It will be difficult for Member States for which the majority of their territory is affected by geographic and demographic handicaps to allocate a substantial share of their allocated funding to the ESF, while what these territories most need is to use the ERDF.

- **Remaining concerns**

Although some flexibility has been introduced into the thematic concentration framework, the CPMR regrets acknowledging that only up to 4 thematic priorities can be earmarked. The rationale can be explained through an example: a region wishing to focus the ESI funds investment towards the establishment of a green economy will only have the possibility of focusing resources on thematic priority (4) "supporting the shift towards a low-carbon economy in all sectors" and solely a low percentage of funds can be invested on the remaining priorities such as (5), (6) and (7), namely "promoting climate change adaptation, risk, prevention and management", "preserving and protecting the environment" and "promoting sustainable transport and removing bottlenecks in key transport infrastructures". Hence, an integrated strategy on green investments in a more developed region would be limited by the thematic concentration provisions.

A last concern regards the extension of the scope of the ERDF in more developed regions. Although the compromise reached during the 'trilogue' negotiations foresees that more developed regions can in principle use the ERDF funding to cover infrastructure investments, the Commission seems reluctant to accept those interventions included in the draft Partnership Agreements.

3.2. Partnership arrangements

Commission proposal – 2011	Final text – 2013	CPMR position
The Partnership principle, Art. 5 of the Common Provisions Regulation, was reinforced by making it binding for the Member States to consult with local and regional authorities and other partners for the preparation of programmes.	Strengthened role of local and regional authorities, in terms of the preparation and implementation of programmes vis-à-vis of the other partners.	There should be a clear distinction between local and regional authorities and other partners as they are democratically elected bodies that hold a crucial role in preparing and implementing the programmes.
Introduction of the Code of Conduct on partnership.	Support and reinforcement of the Code of Conduct on partnership to be adopted as a delegated act.	Support to meaningful involvement of regions in the design and implementation of partnership contracts. The CPMR proposed the concept of 'Territorial Pacts' as early as 2008 to define clearly the responsibilities between regions, Member States and the Commission on ESI funds management

- **Remaining concerns**

The new provisions on Partnerships are remarkable and represent and a further step in the right direction towards the shared management of ESI funds between several levels of government. Nonetheless, it is regrettable that the Code of Conduct on Partnership has been released very late considering that it entered into force in February after the approval of the European Parliament. Therefore, although its provisions are binding, preparations for Partnership Agreements and discussions between Member States, sub-national authorities and stakeholders started before the Code of Conduct entered into force.

CPMR Members have voiced concerns about the quality of the consultation process which has taken place on the Partnership Agreements and future operational programmes. In some cases (such as in the UK in particular), the deadline for sending comments on draft documents was unacceptably short.

It remains to be seen as to whether the European Commission will 'proactively' enforce art. 5 and the Code of Conduct when making observations to the Partnership Agreements in case it is found that consultations have not been properly arranged and/or Code of Conduct's provisions have not been respected.

3.3 Common Strategic Framework and strategic approach

Commission proposal – 2011	Final text – 2013	CPMR position
The Commission proposed to adopt the CSF as a delegated act.	The European Commission will keep some elements of the CSF as an annex to the CPR, whilst others will be adopted as a delegated act.	The CSF should be an annex to the Common Provisions Regulation. Strong support to the Common Strategic Framework as providing a strategic approach for the five following funds: ESF, ERDF, EMFF, EAFRD, CF
Possibility of establishing multi-fund programmes and therefore integrating interventions.	Multi-fund programmes can be used, even though their use remains optional.	The CPMR supported since the beginning the multi-fund programmes and asked the European Commission to help managing authorities in that respect
Special provisions for to address regional demographic challenges and the specific needs of geographical areas most affected by serious and permanent natural and demographic disadvantages.	The text has not changed, despite the combined efforts of the European Parliament and the CPMR to increase the role of these provisions.	Need for Cohesion Policy to follow an integrated approach to address regional demographic challenges and the specific needs of geographical areas most affected by serious and permanent natural and demographic disadvantages, as defined in Article 174 of the Treaty.

- **Remaining concerns**

The CPMR is pleased overall by the introduction of the Common Strategic Framework as this introduces novelties in the management of ESI funds. In particular, the Commission will now authorise multi-fund programmes and encourage the use of integrated approaches. This will force different ministries to work together on specific projects and better reflect the complex nature of economic development. Nevertheless, the use of multi-fund programmes remains optional and therefore most of its potential will be unexploited as not many Member States have opted for this new approach. At the recent CPMR Political Bureau meeting in Leiden which took place on 14 February, many Members welcomed the possibility to link ESI funds but feared that at national level, this would result in an increase of the bureaucratic burden and may prevent managing authorities to consider using the new possibilities for linking the funds together.

3.4. Reference Period and Review clause

Commission proposal – 2011	Final text – 2013	CPMR position
Reference period used to calculate structural funds allocation should use most recent data available. However, the text mentions that the reference period will be the average of the years 2006-08.	As a result from the negotiations, the reference period now includes the average of the years 2007-2009.	Reference period should be able to take into account the effects of the crisis. It is regrettable that the most recent available statistics are not taken into account as several regions would be assigned to a different category.
The initial proposal included no review clause.	A review clause has been introduced to re-allocate part of the funds in 2016 up to €4 billion.	The CPMR was the first organisation that proposed a mechanism to re-allocate funds according to the new level of GDP per capita in order to take into account of long-term crisis effect. In the CPMR proposal this instrument was the so-called "Crisis Contingency Fund".

- **Remaining concerns**

The CPMR draws attention to the political consequences and impact on the ground that the decision on the choice of the applicable reference period will have on the credibility of EU Cohesion Policy in the long run. In this respect, not using the latest statistics means that medium and long term effects of the current economic and financial crisis on regional GDP risk to be overlooked. As highlighted in the CPMR technical note on the reference period, several regions would change eligibility category meaning that the allotted resources will be fewer than those needed.

3.5. Macroeconomic conditionality and Economic Governance

Commission proposal – 2011	Final text – 2013	CPMR position
In case of non-respect of budgetary discipline the suspension of payments and commitments may apply macroeconomic conditionality for all CSF funds.	The provisions on Macroeconomic conditionality have been kept. However, the European Parliament will be kept informed about the process before sanctions will apply and may propose a structured dialogue on the application of this article. The suspension of funds cannot exceed 50% of the payments for each of the programmes concerned	Against macroeconomic conditionality. Proposals evoked by the CPMR in the event that macroeconomic conditionality applied as a last resort and to involve the European Parliament in the process echo some of the ideas discussed by Member States in the Council.
Mention of the CSF as playing a potential role to establish a closer link between Cohesion Policy and the EU Economic Governance.		Against CSF being used as an instrument to link Cohesion Policy and EU economic governance.
Country Specific Recommendations (CSRs) should be linked to Cohesion Policy programmes.	Annual process. Via the European Semester there is a strong link between CSRs and Operational Programmes.	CSRs should be taken into account once at the very beginning of the programming period.

- **Remaining concerns**

The CPMR fought hard against the macroeconomic conditionality principle. The rationale is that regions cannot be held responsible for budgetary discipline as these decisions depend on the central government. The European Parliament endorsed the CPMR proposal to abolish the macroeconomic conditionality but found a strong opposition of the Commission and the Council led by Germany. The compromise seems very weak as the European Parliament did not obtain any veto power and will only be informed about the procedure.

As highlighted in the CPMR Policy Position on the linkages between Cohesion Policy and EU economic governance adopted in Leiden on February 2014, Cohesion Policy, as the main EU investment policy, should better complement EU economic governance to stimulate growth and jobs. Sub-national levels of government in the Member States play a fundamental role in the delivery of EU policies and must respect the limits imposed by fiscal discipline as well. Leaving regions out of the process ownership would put the overall EU economic governance at risk. Increasing political accountability and the sense of ownership of the European Semester process would increase the efficiency of the reforms. The CPMR also notes that the Country Specific Recommendations are broad, high level national recommendations. Bespoke Country Specific Recommendations based on regional evidence to target regions (or groups of regions) with defining characteristics would be far more efficient. A mechanism to allow regional characteristics and challenges to be fed in to the Annual Growth Survey and eventually the Country Specific Recommendations would be welcome.

3.6. Territorial dimension

Commission proposal – 2011	Final text – 2013	CPMR position
	The European Parliament report on the CPR supported the CPMR position that the structural funds allocation methodology should be based on a wider set of criteria, but these were never considered by the Council as part of the trilogue negotiations.	The allocation of funding to various territories with specific conditions should be revised. The situation of Outermost Regions relates to a specific article of the Treaty (Article 349), and associating it with that of other territories may dilute the purpose of this article. Therefore, the OMR situation should be addressed separately, with a level of support corresponding to the severity of their situation. The geography of Europe is not homogeneous. Some Member States are beset more than others by permanent and severe geographic handicaps such as insularity, mountainous terrain, or low-population density.