

## Ideas Paper on integrating environmental aspects into new cohesion policy

### Introduction

This Ideas Paper has been developed by the ENEA-MA<sup>1</sup> Working Group on Future Cohesion Policy<sup>2</sup> as a contribution to the debate on future cohesion policy regulations. The main goal is not only limited to supporting better integration of environmental aspects into new regulations. The intention is to go beyond this objective and draw attention to 'win-win-win-win' solutions (positive for cohesion policy, European policy, economy and environment) to support the development of better cohesion policy regulations.

**This is not an official position paper from Member States on the future cohesion policy or a reflection of discussions taking places elsewhere** (e.g. the High Level Group reflecting on future cohesion policy). The proposals are based on the practical experience of ENEA-MA members - environmental and managing authorities, as well as other organisations - regarding cohesion policy programmes and projects. Concerns do vary. For example, some of ENEA-MA members have been challenged by delays and low absorption rates for environmental investments due to lack of capacity or technical expertise. Other members have had to face difficulties in implementing horizontal priorities, harmonising various sectoral interests to create successful projects or trying to involve stakeholders in mutually satisfying ways.

A starting point within the Working Group was a review of the requirements of the current General Regulation to see how future implementation may be enhanced by expressing the European added value more comprehensively. At the same time, it was recognised that challenges have changed since the adoption of the current multiannual financial framework 2007-13. While cohesion policy, with its own objectives to be implemented, is not seen as the only policy to bring the Europe 2020 Strategy to success, it can make a great contribution to its implementation due to its multilevel and cross-sectoral, integrated nature. The future cohesion policy has to align its goals to the delivery of the Europe 2020 Strategy and it has to be more performance driven. Climate change and resource efficiency, as recognised in the Europe 2020 Strategy, and biodiversity loss have become major environmental challenges.

### General principles

As a general principle it is of utmost importance that the requirements to be set **do not increase the administrative burden** of Member States or the final beneficiaries, but rather they serve as guidance and selection criteria for developing and implementing projects.

### **General reference to cohesion policy and sustainable development**

- It is suggested to include a provision linking cohesion policy, Europe 2020 and EU sustainable development objectives:
  - *Cohesion Policy should contribute to the goals of Europe 2020 while considering the EU sustainable development objectives.*

### **General references to compliance with *acquis***

- It is recommended to maintain (subject to necessary updates) in the new Regulation, general references regarding compliance with *acquis*<sup>3</sup> (this may need to be supplemented by a guidance note identifying issues of particular importance for the future programming period):

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<sup>1</sup> The European Network of Environmental Authorities for the Cohesion Policy (ENEA) was set up in 2004 in order to contribute to the integration of the environmental and sustainable development policies in the cohesion policy. In order to increase the effectiveness of the ENEA, its composition was extended to managing authorities in 2009. It led to the establishment of a joint network – the European Network of Environmental Authorities – Managing Authorities for the Cohesion Policy (ENEA-MA). The representatives of non-governmental organisations (including, Bankwatch and WWF), international organisations and some Non-Member States are also part of the Network. The network provides a platform for sharing experience, exchanging views and good practices.

<sup>2</sup> The Working Group included representatives of selected Member States (in their personal expert capacity), CEE Bankwatch/Friends of the Earth Europe and WWF.

<sup>3</sup> Such references are included in point 22 (Preamble) and Art. 9.5 of the current General Regulation.

- *The activities of the Funds and the operations which they help to finance should be consistent with the other Community policies and comply with Community legislation.*
- *Operations financed by the funds shall comply with the provisions of the Treaty and of acts adopted under it.*

### **Sustainable development**

- It is proposed to retain an Article referring to sustainable development<sup>4</sup> subject to necessary changes resulting from the entry into force of the Treaty of Lisbon and a need to include new references<sup>5</sup>.
  - *Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development, as set out in Article 11 of the Treaty.*

### **Other specific provisions**

#### **Objectives of the Funds**

In accordance with Article 191<sup>6</sup> of the Treaty, it is proposed to include a reference that objectives (including a territorial cooperation objective) will be achieved, among others, by "*preserving, protecting and improving the quality of the environment; promoting rational and prudent utilisation of natural resources and measures combating climate change*".<sup>7</sup>

#### **Urban agenda**

- It is suggested the emphasising in the General Regulation that towns and cities are **consumers of natural resources** (which is particularly relevant in the framework of the Resource Efficiency Flagship initiative) and as such should be involved in driving the resource efficiency agenda. To this end, a relevant reference could be included in the Preamble.
- In addition, special attention should be given to rural-urban inter-linkages and the co-ordination of different measures in this respect should be emphasised in both the Partnership Contract and the Common Strategic Framework.

#### **Partnership**

The feedback received from the ENEA-MA members indicates that the current General Regulation (Art. 11) gives space to Member States to interpret and implement the partnership principle in various ways with varying intensity. There is a wide range of experience depending on the Member State or a specific issue. There are some very positive examples but also cases where the involvement of environmental authorities and other relevant civil society organisations is limited to discussions on issues or projects which are purely environmental.

The experience, in particular, from new Member States shows<sup>8</sup> that non-governmental organisations' efforts at national level to establish public participation and contribute to the partnership principle are not successful in the absence of clear guidance. The access to information (and timeline for decision-making) is also often insufficient to allow for an equal participation in monitoring and influencing committees. In order to ensure that the composition

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<sup>4</sup> Art. 17 of the current General Regulation.

<sup>5</sup> Note: Article 11 of the Treaty on the Functioning of the European Union (ex Article 6 TEC):

*"Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development."*

<sup>6</sup> "Article 191 (ex Article 174 TEC)

1. *Union policy on the environment shall contribute to pursuit of the following objectives:*

— *preserving, protecting and improving the quality of the environment,*

— *protecting human health,*

— *prudent and rational utilisation of natural resources,*

— *promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."*

<sup>7</sup> The reference to environment in the Art. 3 of the current General Regulation refers to "protecting and improving the quality of the environment" (Art. 3.1) or "the protection and improvement of the environment" (Art. 3(2)(a) and (b)); there is no reference to environment under the European territorial cooperation objective (Art. 3(2)(c)).

<sup>8</sup> *An analysis of the partnership of public administration with non-governmental non-profit organizations in Central and Eastern Europe,* <http://www.sfteam.eu/index.php?id=42>

of advisory bodies and information availability practices will not lead to a marginalization of partners, minimum standards should give the basis for partners' roles, rights and responsibilities. Lack of capacity on the side of civil society organisations could be actively mitigated through technical assistance.

In view of the above, it is recommended the following:

- Placing environmental partners at equal level with economic and social partners including environmental authorities and civil society organisations. This could be done, for example by, re-writing the current Art. 11(1)(b)<sup>9</sup> to incorporate environmental partners: "*the economic, social and **environmental** partners ...*".
- Including partnership in defining/selecting thematic and investment priorities at the national and regional level, from the start of the development of the Partnership Contract and continuing throughout all phases of programming.
- Proposing the establishment of "EU level guidelines on partnership" for the whole programming cycle (minimum standard) to ensure that some important partnership requirements are fulfilled across all Member States. These Guidelines should set, for example, the requirements for ensuring (timely) access to planning, implementation and evaluation documentation enabling participation/contribution/involvement (already in the planning phase), or the selection process for representatives in respective bodies. At the same time, taking into account that conditions in various Member States are different, the guidelines should cover provisions that could be implemented without major difficulties across all Member States.
- Including a general provision that the 'rules of procedure' (referred to in Art. 63 of the current General Regulation in the context of Monitoring committee) should also be developed for the planning stage and for the implementation of the partnership principle in general (e.g. publication and realization of standard requirements about composition, access to documentation, etc., following the "EU level guidelines on partnership").
- Encouraging Member States to allocate financial resources to enable the participation of stakeholders who otherwise would not be able to participate actively.

### **Conditionality**

ENEA-MA Working Group supports the definition of the conditionality connected with the need to increase the effectiveness of the cohesion policy. However, there is also a need to ensure that environmental considerations are reflected in providing funding to other key sectors, in particular, transport.

The suggestions below do not have to be treated entirely as proposals for specific conditionalities but they can be achieved via different means, e.g. providing specific references in the ERDF and/or Cohesion Fund regulations; or by introducing an indicator (linked to a specific target) regarding soil sealing/land loss.

There is existing EU environmental legislation, including a strategic environmental assessment (SEA) or an environmental impact assessment (EIA), which applies across different sectors. However, mere compliance with the environmental *acquis* is not sufficient for achieving economic growth and jobs creation alongside sustainable development. Therefore, there is a need to go beyond compliance and business as usual.

### *Environment*

- Conditionalities for environment should be limited in number and they should be only applied for major investment priorities such as water and waste infrastructure, for example, introducing planning requirements that River Basin Management Plans/waste management plans are in place and projects have to be consistent with such plans.
- As regards biodiversity and Natura 2000, most priorities and goals in this area are covered by the *acquis communautaire* and multilateral agreements. Any conditionalities would have to be treated most carefully and they should not become an additional obstacle for fulfilling these goals and objectives. A possible conditionality, if needed, could be that EU financing has to contribute to closing the gaps in fulfilling biodiversity priorities at the Member State and regional level.

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<sup>9</sup> Art. 11(1)(b) of the current General Regulation refers only to economic and social partners: "*the economic and social partners*".

### *Transport*

- At the Member State level, a balance has to be struck between non-sustainable and sustainable transport modes (including past and current experience) and country specificity has to be taken into account (e.g. during negotiations of OPs, etc.).
- For transport projects outside TEN-T, preference should be given to sustainable transport.
- Master plans for transport (a multi-modal approach and not only a master plan for motorways or railways) should be required for major beneficiary Member States receiving support for the transport sector, taking into account a specificity of various Member States and/or regions (e.g. limitations imposed by an island location) and the amount of available funding. This should be applied in particular to Member States with previous experience of conflicts between transport and environment, as well as low public acceptance for transport projects. Such master plans should be subject to an SEA procedure. To avoid the duplication of assessments<sup>10</sup> the results of such SEAs could be integrated into SEAs for relevant OPs.

### *New infrastructure and soil sealing/land loss*

- New infrastructure should not lead to additional soil sealing/land loss or it should be minimised by appropriate spatial planning at the Partnership Contract level. This requirement could be combined with compensatory measures – i.e. offsetting land sealing/loss (e.g. creation of green spaces, green infrastructure).

## **Common Strategic Framework**

It is proposed to set specific provisions regarding the Common Strategic Framework (CSF):

- The Council shall establish at EU level the CSF, defining the contribution of all the Union funding instruments in achieving the common objectives, and setting out the crosscutting issues. It will translate EU policy objectives and legislation, the targets and objectives of Europe 2020, the Integrated Guidelines, and the flagship initiatives into investment priorities.
- Cross cutting priorities outlined in the CSF should at least include climate change and resource efficiency (including, biodiversity)<sup>11</sup>.
- Guidelines for implementing cross-cutting priorities shall be developed at the EU level to provide practical advice. They shall be applicable to Partnership Contracts and Operational Programmes (OPs).
- A provision should be included in the CSF to ensure that Partnership Contracts and/or OPs will reflect on how national policy targets will contribute to fulfilling commitments under the EU environment and climate policy and legislation.

## **Partnership Contract**

- It should cover all the Funds to enhance cooperation between them at both Member State and EU level.
- The preparation of a Partnership Contract should involve all partners who will be responsible for its implementation, and other relevant stakeholders in accordance with the partnership principle.
- It should include a SWOT analysis of development disparities, weaknesses and potential, taking into account trends in the European and world economy, the progress in achieving EU environmental and climate objectives and fulfilling obligations deriving from the *acquis*, as well as European and global trends in this area.
- It should link national policy targets with the Funds support. Specifically, it should outline how EU assistance will fit into a global picture of national funding. It should also include a financial plan and a timetable on how a Member State will fulfil its national policy targets, resulting from EU obligations, including, commitments resulting under environment and climate policy and legislation.

## **Major projects**

- The current General Regulation (Art. 40) already contains an obligation to send an analysis of the environmental impact as a part of a Major Project Application. Compared to current requirements, section f. of

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<sup>10</sup> Art. 4(3), 5(2), 10(2) of the SEA Directive.

<sup>11</sup> "These resources include raw materials such as fuels, minerals and metals but also food, soil, water, air, biomass and ecosystems.", Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the committee of the Regions, A resource-efficient Europe – Flagship initiative under the Europe 2020 Strategy, COM(2011) 21.

the Major Project Application<sup>12</sup> should be re-organised to include the information on how the project has addressed climate and resource efficiency (including biodiversity) considerations – 'climate and resource efficiency proofing'.

- The Commission should provide guidance on how to assess/integrate climate and resource efficiency in major projects. However, this should not lead to an excessive administrative burden for beneficiaries and managing authorities and the assessment could be qualitative (in the case if a quantitative assessment is particularly complex and imposes an unnecessary burden). A collection of good practices should facilitate this effort, managed, for example, by JASPERS.

### **Strategic follow-up**

- It is understood that a relevant article on strategic follow-up will be linked to the Europe 2020 Strategy, including, a climate objective and the resource efficiency flagship initiative.
- The General Regulation should contribute to decreasing an administrative burden and the reduction of a number of strategic reports.

### **Evaluation**

- It is proposed to maintain the reference of Art. 47(1) of the current General Regulation to environmental assessments (EIA and SEA): *"Evaluations shall aim to improve the quality, effectiveness and consistency of the assistance from the Funds and the strategy and implementation of operational programmes with respect to the specific structural problems affecting the Member States and regions concerned, while taking account of the objective of sustainable development and of the relevant Community legislation concerning environmental impact and strategic environmental assessment."*
- If no SEA is carried out for Partnership Contracts (i.e. some may not fall within the SEA Directive), it is recommended that some form of an environmental assessment should be carried out to address environmental impacts of a Partnership Contract, e.g. as a part of an *ex-ante* evaluation.
- A Checklist/Short Guidance should be provided by the Commission to facilitate SEAs for Partnership Contracts (if relevant) and OPs.
- Member States/Managing Authorities should be required to report on how *ex-ante* and *ex-post* evaluation findings are applied to improve the performance of the Funds.

### **Technical assistance**

- The rules to receive technical assistance are too complicated so it is suggested to include specific provisions to simplify these.
- A coordination mechanism/s should be established for Technical Assistance funding to avoid duplication, create synergies and exchange best practice.
- There is a need for financing efforts to help in implementing climate change and resource efficiency (including biodiversity) cross-cutting priorities, for example, by supporting networks between managing authorities and environmental authorities; task-forces, sustainability theme managers. This may include the requirement of green procurement, EMAS certification of buildings, etc. when funding operational expenditures related to implementation.

### **National performance reserve**

- The national performance reserve versus an EU performance reserve is considered as a more favoured approach. Its use should be optional.

### **Revenue generating projects**

The ENEA-MA members express their concern as regards the practical application of current provisions (Art. 55) regarding revenue generating projects which penalises certain types of 'environmentally' positive projects, for example, railway projects receiving lower co-financing rates than road projects which are considered as non-

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<sup>12</sup> The European Commission's implementing regulation for the Structural and Cohesion Funds 2007-2013, Commission Regulation (EC) No 1828/2006.

revenue generating projects. This does not incentivise Member States to put in place a Polluter and/or User Pays principle for transport infrastructure.

It is understood that the general purpose of Art. 55 was to avoid over-financing of projects which generate revenues. However, in order not to discriminate against certain types of 'environmentally' positive projects, it is recommended that specific provisions are included in a new Regulation along the lines of the following solutions:

- An assessment of revenue generating projects should not be limited to direct infrastructure costs but it should also cover external costs, for example, in line with the 'Commission Transport 2050 Roadmap'<sup>13</sup> - "*... the overall burden for the sector should reflect the total costs of transport including infrastructure and external costs ...*". The *ex-ante* evaluation should state the nature and magnitude of these costs.
- An application of an average rate of EU assistance based on previous experience and depending of the category of project (including external costs) could be considered not only to avoid discriminating against certain projects but also to simplify existing procedures.
- Adaptation of the reference period for calculation of revenue (as it is stated under paragraphs 3 of Art. 55 for projects where it is not possible to estimate the revenue in advance), especially where other principles as "polluter pays principle" already apply for a specific project.
- The aforementioned proposals should be taken into account, observing all conditions as arising from both primary and secondary regulations, which pertain to state aid (the primary regulation: Art. 107 of the Treaty on the Functioning of the European Union; the secondary regulations: block exemptions, Commission Guidance and Decisions on state aid).

### **Green public procurement, GPP**

Public procurement plays an important role in the Europe 2020 strategy<sup>14</sup> as one of the instruments which should be applied to achieve its objectives. The Europe 2020 strategy calls on public procurement "*to support the shift towards a resource efficient and low-carbon economy that is efficient in the way it uses all resources.*" This can be achieved, among others, by "*encouraging wider use of green public procurement*".

The Green Paper on the modernisation of EU public procurement policy<sup>15</sup>, published in the context of the review of the EU public procurement regime, recognises the potential of GPP. It also goes beyond procedural public procurement rules (how to buy') and introduces a concept of imposing mandatory requirements or providing incentives on "what to buy". "*For example, this could be done by imposing mandatory requirements or criteria governing the characteristics of the goods or services to be provided (e.g. maximum levels for energy and resource use, environmental harmful substances, minimum levels of recycling), or alternatively by setting targets (e.g. 60% of public purchases must be environmentally friendly).*"

It is proposed that:

- GPP should be used as an important driver for contracting authorities to reduce environmental impacts of EU funds.
- Financing and guidance needs to be provided to facilitate and motivate such a shift rather to avoid complicating procurement procedures further.
- Member States should set GPP targets for EU funding in their Partnership Contracts, considering National Action Plans for GPP (NAPs) and the GPP Communication 2008(400)<sup>16</sup>.
- Member States should also address at the Partnership Contract level how they will strengthen GPP in accordance with EU GPP criteria (developed for 18 product and service groups), including new developments in this respect, such as, criteria for water and waste projects (under preparation).

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<sup>13</sup> White Paper, Roadmap to a Single European Transport Area – Towards a competitive and resource efficient transport system, COM/2011/0144 final.

<sup>14</sup> Communication from the Commission, EUROPE 2020 A Strategy for smart, sustainable and inclusive growth, COM(2010)

<sup>15</sup> Green paper on the modernisation of EU public procurement policy: Towards a more efficient European Procurement Market, COM(2011) 15 final

<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Public procurement for a better environment, COM(2008) 400/2

## JASPERS

- JASPERS should expand their activities to include climate and resource efficiency (including 'biodiversity') 'proofing'.
- Its support, on voluntary basis, should be provided for:
  - some non-major projects (based on prior joint needs assessments carried out by a Member State and JASPERS);
  - support measures to achieve general objectives such as climate change and resource efficiency, providing guidance for different parts of an Application Form, including examples of good practices.

### **Complex projects with a life-span beyond one multiannual financial perspective**

- Some particularly complex projects have a long project preparation stage going beyond one multiannual financial perspective. It is proposed to examine this issue and possibly consider 'bridging' provisions for such projects to facilitate co-financing from different programming periods, looking at the option of granting automatic extension to the funding of these projects rather than having to approve them all over again on an individual basis.

### **Expenditure categories**

- Codes for categories of expenditure should be reviewed in order to be clear about the contribution of different programmes to various (environmental) objectives, in particular for climate, biodiversity and Natura 2000. The ENEA-MA Working Group on future cohesion policy can work towards the preparation of a set of proposals in this respect.

#### ***Disclaimer***

*Please note that the views presented in this document are a compilation of the ENEA-MA members' input and results of discussions within the ENEA-MA Working Group on Future Cohesion Policy, and as such, they do not represent official Member States' positions, nor do they reflect a consensus position of the network.*