EUROPEAN COMMISSION

Brussels,24.1.2019
C(2018) 99 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on special provisions for the European territorial cooperation goal, supported by the European Regional Development Fund and by financial instruments for external action (Interreg) {COM(2018) 374}.

The proposal forms part of a broader package of ambitious measures designed to govern cohesion policy for the post-2020 period, to promote socio-economic and territorial cohesion across the European Union. More specifically, the proposal aims to foster cooperation between European Union's Member States and between Member States and neighbouring European third countries, partner countries, other territories or overseas countries and territories.

The Commission welcomes the Bundesrat's broad support for the aims of the proposal, but notes its doubts relating to a series of issues. The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and would like to refer the Bundesrat to the following observations in the annex, grouped by topic.

The Commission hopes that the explications provided in the annex clarify the issues raised by the Bundesrat. The Commission is convinced that its proposals provide a solid basis for the negotiations to come. It looks forward to a constructive and positive debate on the proposals for the Common Provisions and the Interreg Regulations and would like to thank the Bundesrat for its support for reaching an agreement on the next Multiannual Financial Framework before the 2019 European elections.

Mr Daniel GÜNTHER
President of the Bundesrat
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The Commission looks forward to continuing the political dialogue with the Bundesrat in the future.

Yours faithfully,

Frans Timmermans	*Corina Creţu*
First Vice-President	*Member of the Commission*

Annex

The Commission has carefully considered the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications grouped by topic.

<u>Budget: financial management</u>

As far as the issue of available budget is concerned, the Commission has presented a Multiannual Financial Framework for 2021-2027 that is both realistic and ambitious. This required taking into account a wide range of issues, including Brexit, the need to provide support for new priorities and the need to ensure support for our regions and cities. This implies that some adjustments were needed in the cohesion policy budget as well as in the allocation for Interreg. What has to be kept in mind is that cohesion policy is still the largest policy of the Union in terms of financial volume and continues to cover all regions.

The Commission also notes the Bundesrat's reservations with regard to the 70% co-financing rate. Co-financing rates were raised in a time of economic crisis to ensure the continuity of investment in regions hit hard by the crisis. A decrease is now being proposed to reflect the improvement of budgetary conditions across the European Union. Member States are consolidating their financial situation. The decrease should also contribute to greater 'ownership' as beneficiaries' financial interest would increase and should maintain if not increase the overall volume of public investments in key sectors of European importance.

The Commission also takes note of the Bundesrat's concerns with regard to the reintroduction of the N+2 rule. The Commission is convinced that N+2 is necessary. The current decommitment rule of N+3, combined with the high level of pre-financing, has been damaging for cohesion policy. It has led to excessively slow programme implementation – at least in financial terms – which has been heavily criticised. Pre-financing levels result from the overall situation of the budget in 2021-2023 in terms of the forecast of payment appropriations, taking into account the 2014-2020 execution of programmes. The progressive return to the N+2 rule, together with more than 80 simplifications proposed, is feasible and necessary to speed up the delivery of the policy: the N+2 rule, coupled with simplification and lower levels of pre-financing, would certainly contribute to speeding up implementation, especially if it goes hand in hand with lighter and more strategic programming and reporting requirements. The Commission has made several proposals to accelerate programming and ensure continuity across periods including through provisions promoting the rollover of management and control systems.

<u>Interreg: Programme areas, Small Projects Fund, Interregional innovation investments</u>

Interreg is largely a territorial instrument that seeks to deepen integration in certain types of territories spanning across borders: border regions separated by a political border, territories characterised by a shared geographical feature such as a large river or a mountain range and sea basins. In the current period, the programme areas do not always reflect these functional areas. There are also several cases of geographic and *thematic overlaps. With its new proposals, the Commission is seeking to reduce overlaps and to approach functional territories in a more consistent way. In line with the concept of functional areas, the content of programmes needs to be based on robust strategic frameworks. These already exist in many cases: the four macro-regional strategies, sea-basin strategies, and cross-border development strategies.*

For maritime cooperation, the Commission considers that a higher impact will be obtained when all countries and regions of a given sea basin cooperate to tackle the most urgent problems and exploit the common potential. This is why the approach proposed to maritime cooperation has been revised. At the same time, provisions have been introduced to ensure that cross-border links across the sea should not be forgotten. The financial envelopes will have to be managed in such a way that financial support for bilateral maritime cooperation can continue. In parallel, the management and decision-making structures of the new programmes will have to adapt to this new approach and ensure that national and regional actors are all equally represented.

The Commission fully agrees with associating Member States, regions and other key stakeholders from programming to implementation and evaluation and will start engaging with the Member States and regions on the envisaged future architecture of programmes next year. The progress in the negotiations with the Council and European Parliament on the Multiannual Financial Framework and the cohesion policy legislative proposals will need to be taken into account in the planning and preparations for the next generation of programmes.

The Commission fully recognises the excellent work done by the INTERREG Europe programme, supporting policy learning among public authorities to improve the performance of policies and programmes for regional development. To continue with the type of activities promoted by INTERREG Europe, it is important to note that the Commission's proposal promotes and facilitates interregional co-operation activities within the national and regional programmes under the Investment for Jobs and Growth goal. It is also proposed that the existing INTERACT programme would be expanded to become a platform for policy learning and sharing experiences and best practices within the Interreg programmes, building further on the excellent work and achievements of INTERREG Europe in the 2014-2020 and previous periods.

No decisions have yet been taken on the future architecture of Interreg programmes as these will be discussed next year with the Member States and regions on the basis of the Commission proposals. Only after the cohesion policy legislation has been formally adopted, can the Commission finalise the list of Interreg programmes, as foreseen in Article 11(1) of the European territorial cooperation proposal {COM(2018) 374 final}.

Regarding the concept of a Small Projects Fund, like every other operation, any such Fund also needs to contribute to the policy objectives and respect sound financial management principles (incl. N+2 rule and financial corrections). The requirement linked to cross-border legal persons is to ensure that the governance structure reflects the cross-border nature of the operation. The obligation to use simplified cost options applies to every operation below a certain threshold, and that threshold is even higher *and more encompassing for other, mainstream operations (EUR 200.000 instead of EUR 100.000), as foreseen in Article 48(1) of the Common Provisions Regulation proposal {COM(2018) 375 final}.*

Furthermore, the Commission is also proposing – in Article 3(5) and Article 61 of the ETC proposal – to introduce a new cooperation component to finance interregional innovation investments for partnerships across borders. The objective of the component is to support the development of European value chains by helping smart specialisation partnerships cooperate in investments in shared priority areas. It is a new way of doing interregional cooperation led by the investment needs of the partnerships in the regions. It responds to a specific request from many regions to have a dedicated instrument managed by the Commission to support cooperation in concrete investment projects. It is based on the governance of the smart specialisation strategies bringing together regional partnerships, specific to cohesion policy. It reflects the need to make innovation policy within cohesion policy more outward looking with stronger European connections between regions, as reflected in the Communication on 'Strengthening Innovation in Europe's Regions' {COM(2017)376} and many reports by the European Parliament and the Committee of the Regions. It should have a strong focus on the development of value chains in Central, Eastern and South-Eastern Europe, and strengthen their collaboration with regions in more developed parts of Europe. The calls would be open to any partnership that demonstrated that it corresponded to shared smart specialisation regional strategy priorities and which met the criteria of the call.

Indicators, monitoring and evaluation

The Commission welcomes the Bundesrat's appreciation of the development of Interreg-specific indicators designed to measure the results and the EU added value of cooperation programmes. The Interreg indicators are an integral part of the system of indicators for outputs and results proposed by the Commission for the European Regional Development Fund and Cohesion Fund. Therefore, all programmes financed by the Funds need to use the common indicators (thematic, horizontal, and specific) to the extent they are relevant. On the methods of data collection, under shared management, the organisation of the monitoring systems comes under the responsibility of the Member State.

As regards the frequency of data transmission by the Member States, the Commission proposal addresses the need for more up-to-date information on the implementation and achievements of cohesion policy in the view of timely publication for the benefit of the general public as well as in response to requests for information and communication solicited by the European Parliament.

Value Added Tax

On value added tax (VAT), the formulation of Article 58(1)(c) of the proposed Common Provisions Regulation introduced a simplified method which allows for VAT eligibility if the total cost of an operation is below a EUR 5 million threshold. The Commission conducted a survey into the size of operations financed by the European Regional

Development Fund and Cohesion Fund in early 2018, which looked at some 320 000 operations. Using assumptions of average cost, the following results were obtained: (1) the average operation cost was EUR 600 000; (2) as regards the split of the number of operations regarding the EUR 5 million threshold, 94% of the operations were below EUR 5 million, only 6% were above. The above means that the implications of the new VAT proposal for post 2020 should be positive for most Member States, as VAT will be eligible for most of their operations supported by these funds.

State aid

Regarding State aid, the Commission has been engaging in the revision of the General Block Exemption Regulation and will be looking for more synergies between applicable State aid rules and cohesion funding.

Some simplification elements have already been introduced in the proposed Common Provisions Regulation. In particular, projects that were awarded a 'Seal of Excellence' certificate under Horizon Europe may receive support under cohesion policy instead of support from Horizon Europe, with the same support rate. In terms of state aid, these projects will be treated as if they were financed by Horizon Europe (to be specified in the next revision of the General Block Exemption Regulation). In addition, several provisions regulating the exclusion scope under the European Regional Development Fund and the Cohesion Fund (e.g. Article 6(1), on rolling stock and broadband) echo applicable State aid restrictions, hence ensuring smooth convergence with cohesion interventions.

Programming

Recent years have shown that it is increasingly difficult to pre-establish investment needs, objectives and targets for a period of almost a decade. Challenges may change considerably, with significant impact on the socio-economic context of Member States and may require a quick reaction – programmes need to be resilient and flexible to adapt. The Commission therefore proposes that the commitments for the last two years (2026 and 2027) are only allocated to priorities on the basis of a mid-term review.

Experience shows that the last two years' commitments do not affect the continuous financing of ongoing project implementation, given the gap between EU commitments in the programme and the rate of submission of payment applications especially in the fifth year of implementation.

The Commission would like to clarify that managing authorities are not generally required to consult criteria and methodologies for the selection of operations before submission of the programme with the Commission – Article 67(2) of the Common Provisions Regulation proposal makes clear that this only needs to happen in cases where the Commission requests so.

Technical assistance

On technical assistance, the flat-rate technical assistance is in fact a performance-based remuneration: the performance is the absorption rate of the programme. The flat-rate *technical assistance is for covering the running costs of the programme and Member States can spend it on all activities in the scope of the technical assistance.*

<u>*Management and control*</u>

The approach to involve the Commission in determining project selection criteria (through a prior consultation) is to provide more legal certainty for beneficiaries and avoid financial corrections regarding selection later on.

It will not be possible to set up an independent clearing house in the Commission for disputes that occur between the managing and audit authorities. Instead, the Commission considers that its simplification proposals introduce a straightforward decision making path for eligibility rules disputes, as provided for in Art. 36 (4) of the European territorial cooperation proposal.

On the control tasks, the Commission would like to clarify that only managing authorities can carry out management verifications.

With regard to the error rate, the 2% threshold for the error rate is the European Court of Auditors' threshold of materiality for the whole EU budget; hence, it does not seem feasible for the Commission to lift this to 5% as the Bundesrat suggests.

On the alleged extrapolation of financial errors occurring in individual projects, the Commission would like to draw the Bundesrat's attention to paragraphs 7, 8 and 9 of the Article 48 (parts7, 8 and 9), 48(8) and 48(9) of the proposed Interreg Regulation, which shows that there is no extrapolation envisaged as such.

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