

Opinion

regarding the Proposal for a regulation of the European Parliament and of the Council 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 1083/2006 - COM(2011) 615

Having regard to the Treaty of Lisbon and in particular Articles 5 and 12 TEU and Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, as republished, in particular Article 148 thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Taking into account the point of view of the Government of Romania, expressed in the letter from the Ministry of European Affairs,

Taking into account the draft opinion presented by the Committee for Budget, Finance and Banking at its meeting of 22 November 2011,

Taking into account the draft opinion presented by the Committee for Industry and Services at its meeting of 29 November 2011,

Taking into account the draft opinion presented by the Committee for Employment and Social Protection at its meeting of 30 November 2011,

Taking into account the opinion presented by the Committee for Economic Policy, Reform and Privatisation at its meeting of 6 December 2011,

Taking into account the final draft opinion presented by the European Affairs Committee at its meeting of 19 December 2011,

Having regard to the approval given by the Permanent Office of the Chamber of Deputies on 22 December 2011,

The Chamber of Deputies, acting in accordance with Article 40 of Decision No 11/2011 of the Chamber of Deputies of 27 April 2011, hereby adopts this opinion:

1. Article 27, on the participation of the European Investment Bank, provides that ‘the Commission may request the EIB to examine the technical quality and economic and financial viability of major projects and to assist it as regards the financial instruments to be implemented or developed’.

The Chamber of Deputies regards EIB’s participation as beneficial, but it is necessary to specify clearly the conditions in which the European Commission may request EIB’s assistance.

2. Article 28, on community-led local development, provides that ‘Community-led local development, which is designated as LEADER local development in relation to the EAFRD, shall be: . . . (b) community-led, by local action groups composed of representatives of public and private local socio-economic interests, where at the decision-making level neither the public sector nor any single interest group shall represent more than 49 % of the voting rights; . . .’

The Chamber of Deputies considers that the limit imposed on voting rights should be monitored in practice, so as to prevent these membership restrictions on action groups from discouraging the involvement of interested parties which are relevant at local level.

This remark is also valid in conjunction with another provision of the same Article, which states that local development shall be ‘designed taking into consideration local needs and potential, and include innovative features in the local context, networking and, where appropriate, cooperation’.

The Chamber of Deputies recommends that certain entities be subject to a differentiated and more permissive treatment in respect of voting rights held, especially newly established enterprises, initiatives launched by young entrepreneurs, and social enterprises.

3. Article 31, on support from the CSF Funds for local development, provides that ‘support for local development shall include: . . . running costs and animation of the local development strategy up to the limit of 25 % of the total public expenditure incurred within the local development strategy’.

Accepting running and animation costs as eligible appears justified in light of the needs of the local groups, especially in the case of those with limited resources, but the financial aid should focus on essential intervention areas and on operations included in the local strategies.

The Chamber of Deputies recommends that the European Commission propose to the Member States, through the partnership contracts, that the threshold of 25% be gradually reduced over the lifetime of the group, with a view to making funds available for direct intervention.

4. Article 43, on the functions of the monitoring committee, provides as follows:

‘1. The monitoring committee shall meet at least once a year and shall review implementation of the programme and progress towards achieving its objectives. In doing so, it shall have regard to the financial data, common and programme-specific indicators, including changes in result indicators and progress towards quantified target values, and the milestones defined in the performance framework.

2. The monitoring committee shall examine in detail all issues that affect the performance of the programme.’

Given its imprecise wording, this provision risks being interpreted incorrectly, because result indicators and progress towards target values often become relevant only after more than a year, and the general preference is for such monitoring to take place mid-term. Moreover, the expression ‘shall examine in detail all issues that affect the performance of the programme’, which suggests a strict interpretation and application, leads the monitoring committee away from its strategic level of action.

The Chamber of Deputies recommends that in practice a detailed analysis of the indicators be carried out on a half-yearly basis and the 'detailed examination' be the subject of an interpretation decision by the Commission, ensuring the monitoring committee's strategic level of action.

This guidance is even more necessary when taking into consideration that the next provision of the same Article states as follows: 'The monitoring committee shall be consulted and issue an opinion on any amendment of the programme proposed by the managing authority.' It is obvious that a strict interpretation of this paragraph would block the managing authorities, because this Article may be invoked at any time to make any operative decision by the managing authority ineffective.

5. Article 44, on implementation reports, states that 'the Commission shall examine the annual implementation report and inform the Member State of its observations within two months of the receipt of the annual implementation report and within 5 months of receipt of the final report. Where the Commission does not provide observations within these deadlines, the reports shall be deemed to be accepted.'

This provision establishes excessively long deadlines for the examination carried out by the Commission. It is obvious that a dialogue between a Member State and the Commission involving 2-3 exchanges of information would in practice lead to an overlap with the next annual report.

The Chamber of Deputies considers that the Commission has sufficient resources to carry out the analysis, draw up the reply, and send that reply to the Member State concerned within 30 days, in the case of the annual reports, and within a maximum of 3 months in the case of the final reports.

The same Article also provides that 'the annual implementation reports referred to in paragraphs 1 to 4 shall be admissible where they contain all the information required in those paragraphs. The Commission shall inform the Member State within 15 working days from the date of receipt of the annual implementation report if it is not admissible, failing which it shall be deemed admissible.'

These deadlines seem to be much too long, considering the object of checking admissibility.

The Chamber of Deputies recommends that the deadline be reduced to 10 working days.

6. In the section on 'Evaluation', Article 47, on general provisions, states that 'the Commission shall provide guidance on how to carry out evaluations'.

The Chamber of Deputies considers that this provision should be implemented with care, in order to avoid introducing excessive guidelines which could become de facto rules.

The Chamber of Deputies would point out that the Member States have different administrative and legal frameworks, and different administrative cultures in certain respects, and any attempt to impose evaluation guidelines could generate serious difficulties in complying with those guidelines. As a last resort, if these guidelines are detailed, they should include the explicit mention that complying with them is not an obligation for independent evaluators and that deviation from those guidelines does not represent grounds for the Commission to reject the evaluation.

7. Article 49, on evaluation during the programming period, provides that ‘the Commission may carry out, at its own initiative, evaluations of programmes’.

To ensure judicious use of taxpayer money, the Chamber of Deputies considers that an evaluation at the initiative of the European Commission should be conditional on the existence of reasonable grounds for acting in this way and on the Commission presenting a reasoned decision.

8. Taking into account the foreseeable depressed economic conditions, the Chamber of Deputies recommends that the European Commission supplement Article 61, on durability of operations, by taking into consideration the possibility of inserting hardship clauses into contracts covering operations involving private beneficiaries from the business sector.

9. Article 82, on investment for growth and jobs, states that ‘the three categories of regions are determined on the basis of how their GDP per capita, measured in purchasing power parities and calculated on the basis of Union figures for the period 2006 to 2008, relates to the average GDP of the EU-27 for the same reference period’.

This provision refers to the calculation of purchasing power, but does not specify the reference documents to be used to calculate that indicator.

The Chamber of Deputies recommends indicating the reference document and the calculation method.

10. Article 83, on global resources, provides that ‘0.35% of the global resources shall be allocated to technical assistance at the initiative of the Commission’.

The Chamber of Deputies accepts the necessity of technical assistance, but asks that the European Commission indicate the method used to calculate the specified percentage.

11. As a general remark, the Chamber of Deputies would mention that it has reservations regarding the introduction of transition regions, considering that there is no precise economic justification to apply this notion.

12. The Chamber of Deputies has reservations regarding the necessity of special assistance for capital regions and establishing a co-financing rate for each individual territorial cooperation programme, according to the rate applied to regions which are part of the eligible area.

13. As regards the proposals for automatic disengagement, the Chamber of Deputies supports the n+3 rule for the entire 2014-2020 programming period, given the difficulties which persist as a result of the current economic and financial crisis affecting both the Member States and the beneficiaries.

14. With regard to the provisions on delegated acts, which give the European Commission increased powers to adopt delegated acts during the implementation period, the Chamber of Deputies considers that this regulatory option should be limited to certain aspects only, and not be horizontal and unlimited in nature. Otherwise, the outcome will be rules changing ‘in the middle of the game’, i.e. during the implementation period, and this would cause confusion among Member States, affecting both the authorities and the beneficiaries.

15. The Chamber of Deputies firmly rejects Article 21(4), because that provision, authorising the European Commission to unilaterally amend the partnership contract and the operational programmes, is a breach of the principle of shared management.

16. The Chamber of Deputies would stress that there are too many provisions for issuing delegated acts.

17. The Chamber of Deputies would point out that there is evidence that aid from the Solidarity Fund is released with difficulty and too slowly, and it is necessary to introduce measures aimed at increasing the transparency of the criteria for releasing aid from that Fund.

18. The Chamber of Deputies would warn that the new Regulation still contains sources of increased red tape: the proposed changes in the Funds' operating principles and the method of implementing the 'greening' of direct payments.

19. The new Regulation should also include certain necessary elements derived from current practice:

(a) better coordination and strategic concentration, both at the level of the general policy and at the level of individual programmes;

(b) better integration of European Territorial Cooperation at all levels of strategic planning and simplification of implementation, by means of a separate regulation on cooperation, to better reflect particularities;

(c) a method for balancing direct payments: reallocation of a third of the difference between the European average of direct payments and the current level of direct payments in the states where direct payments are below the European average is insufficient;

(d) capping direct payments for large beneficiaries risks affecting the economic performance of farms which have a major contribution to ensuring food security;

(e) voluntary payments for areas with natural constraints should be excluded from the total direct payments subject to capping; the proposed reduction percentages and the financing tranches should be reviewed.

20. The Chamber of Deputies considers that the proposal to restrict the range of beneficiaries to micro-enterprises and small and medium-sized enterprises, and to exclude intermediate enterprises, is too drastic.

21. The Chamber of Deputies considers that the main cooperation areas to be included in the partnership contracts, in the case of cross-border cooperation, should be determined on the basis of a joint exercise of harmonised strategic planning, carried out in partnership with the other states involved. In the case of cross-border cooperation programmes, it would be useful to allow compliance with only two out of four cooperation criteria, and any decision regarding compliance with all the criteria should be taken at the level of each individual programme (see Article 11(4)). This is due to the fact that complying with all the criteria seems impossible in the case of projects carried out within the territory of only one state, and in the case of territorial cooperation projects with single beneficiaries.

22. The Chamber of Deputies would mention that it is necessary to have a more flexible approach towards state aid in the case of territorial cooperation programmes.

23. The Chamber of Deputies would highlight certain inconsistencies found in the text, as follows:

(a) the terms ‘community-led local development’ (see Article 28), ‘joint action plan’ and ‘integrated territorial investment’ are used without specifying the type of investment or territory, or the appropriate territorial level. It is necessary to provide a detailed description of these types of interventions, especially because the proposal for a regulation mentions that some of them must be submitted to the European Commission at the same time as or before the operational programmes (see Article 94(1)). Since there are aspects that have no longer been updated during the current programming period, it is necessary to take a flexible approach to these interventions, by giving the Member State the freedom to choose the moment when it will implement such integrated interventions, including according to needs arising in the course of implementation;

(b) the term ‘provision of infrastructure’ is not sufficiently clear (see Article 93(1)). In Romania, most towns have infrastructure problems, and therefore activities aimed at rehabilitating infrastructure should be regarded as eligible in the context of a joint action plan;

(e) Article 24(2) refers to priorities, whereas Article 87(2)(b) uses the term priority axis.

24. The Chamber of Deputies would point out that adopting a code of conduct for the partnership at European level could hinder the process of implementing the partnership at the level of the Member States. It is necessary to take into account that some Member States have already initiated the programming process for the post-2014 period, and a code of conduct imposing other rules in addition to the national approaches could alter or even stop the programming partnership process.

25. The Chamber of Deputies would point out that, although it gives great importance to a territorial approach to investments financeable from the Structural Funds, the ERDF Regulation does not specify the territorial level where the sustainable urban development will be implemented: town areas, neighbourhoods, towns as administrative units or functional urban areas (the current approach based on growth poles). It is necessary to enable the Member State to decide the territorial level of application according to the particularities of the problems to be solved.

26. As regards the conjunction with the EU’s agricultural policy, the Chamber of Deputies would mention the following:

(a) eliminating financing for investments in the case of producer groups in the fruit and vegetable sector within the single Common Market Organisation would compromise the European Commission’s desire to promote and consolidate trading associations, and the measure itself, based on the financing model proposed in the EAFRD regulation, would become unattractive;

(b) export refunds should be maintained for basic agricultural products and for products not listed in Annex 1, especially in the case of poultry meat, beef and pork, and dairy products.

(c) it is necessary to carry out a thorough analysis of what will happen on the EU market after the elimination of the quota (2015). Romania supports the extension of the deadline

until 2018, and a gradual increase of the quotas (5-10% annually), which would prevent some of the negative effects of eliminating the quotas;

(d) voluntary payments for areas with natural handicaps should be excluded in full for the years 2014 and 2015 from the cap applying to direct payments also in the case of Romania and Bulgaria , because those states are still at the phasing-in stage.

The substantive elements of the proposal for a regulation do not affect any substantive aspects of national law and respect the national legal framework.

This opinion is addressed to the Presidents of the European Parliament, the Council and the European Commission.

President,

Roberta Alma Anastase