

NGO analysis of the results of the Cohesion Policy trilogues

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The undersigning six environmental NGOs, having been working on the Cohesion policy regulations for several years, provide in this document a detailed analysis on the uptake and safeguards of key environmental issues throughout the negotiations between the three institutions (Parliament, Council and Commission), and recommendations to ensure that the next Cohesion Policy for 2014-2020 better contributes to Europe's 2020 targets, creates green jobs, enhances economic opportunities and addresses environmental challenges.

1. NGO initial priority demands

1. Support thematic concentration towards a low carbon economy and the climate proofing of programmes;
2. Support measures for environmental protection and resource efficiency, including measures for protecting biodiversity and ecosystem services across all regions;
3. Improve result orientation of the Cohesion Policy through ex-ante conditions and an adequate performance framework based on targets and indicators; and
4. Ensure strong partnerships through multi-level governance and the European Code of Conduct.

2. Analysis of the results of the Cohesion Policy trilogues

1. Climate support

- **Thematic concentration towards a low carbon economy (ERDF Art. 4)**

The thematic concentration on climate has been maintained. While we welcome that this principle is headed in the right direction, we regret that the agreed percentages are too low to put the Cohesion Policy on track in order to allocate 20 per cent of the overall amount to climate action, as necessitated by the next EU budget. This means that significant additional efforts will be needed in the Operational Programmes to reach that 20 per cent level in the Cohesion Policy. In this regard we regret that the commitment to spend 20 per cent of the EU budget on climate action has been withdrawn from the Common Strategic Framework (CSF).

- **Climate proofing of programmes (CPR) and environmental safeguards**

Tackling climate change is visible within the Common Provisions Regulation, and climate tracking is maintained as proposed by the Commission. However a key provision introduced by the Parliament with respect to ex-ante evaluations (Art. 48) including

climate change mitigation assessments of the programmes has been watered down during negotiations to “taking into account climate change mitigation needs”. The implementation of this provision thus can lead potentially to a mere ‘box-ticking’ exercise. This is not sufficient to ensure the proper climate assessments of programmes, which is a must to progressively shift the EU towards a low carbon economy.

Furthermore, in disengaging the European Commission from approving certain parts of the Operation Programmes (Art. 87,5 CPR), a dramatic shift away from implementing reliable safeguard mechanisms and away from a strategic approach to climate and environment mainstreaming has occurred. Climate and environmental mainstreaming actions are no longer subject to Commission approval, i.e. it is up to Member States to decide on the scope and relevance of environmental mainstreaming.

Also, in annexing the Common Strategic Framework (CSF) it has now been reduced to guiding principles, leaving it up to Member States to decide if the principles have to be followed. This is just another example where the initial approach of strategic alignment will have limited success.

- **Fossil fuel subsidies (ERDF Art 5.7)**

Harmful fossil fuels (gas) subsidies were introduced by the Council while the European Commission and the European Parliament were against it. The agreed text mentions “improving energy efficiency and security of supply through the development of smart energy distribution, storage and transmission systems”. This unclear formulation is alarming in that it still allows for harmful fossil fuel subsidies, depending on how it will be interpreted and implemented in the Operational Programmes. In this context the reference to Member States’ needs of energy security and national energy mixes can only be seen as justification for fossil fuel subsidies. This direction is undermining international institutions that are uniting against fossil fuel subsidies, including the European Parliament, the G20, the International Monetary Fund, the International Energy Agency, the World Bank and others. We therefore call on the Commission to reject all fossil fuel investments by Member States.

- **Airport support (ERDF Art. 3 and Cohesion Fund Art. 2)**

Both the ERDF and Cohesion Fund regulations have banned support for airport infrastructure. However, there is the potential for loopholes where the text states “other than that related to environmental protection, unless accompanied by investments necessary to mitigate or reduce its negative environmental impact”.

It is unacceptable that the most climate-damaging mode of transportation can still benefit via this unclear exemption clause, which in practice can lead to further aviation subsidies depending on its implementation. We call on the Commission to be stringent in the assessment of this condition.

2. Biodiversity support in all regulations

The biodiversity issue has increased in visibility compared to the Commission’s proposal, including in Art. 8 of the CPR (with “biodiversity and ecosystem protection” added in the list of the main environmental issues), Art. 5.4 of the ERDF regulation (with explicit mention of the restoration of biodiversity) and Art. 3 of the Cohesion Fund regulation (with Natura 2000 now explicit). In addition, the new Prioritised Action Framework for supporting Natura 2000 is explicit in the annexed CSF.

Yet all provisions related to biodiversity and ecosystems are voluntary, where there is no introduction of thematic concentration for these actions. We also regret that biodiversity spending tracking has been removed from the CPR. Biodiversity support will therefore entirely depend on the Member State's programming. This is worrying in that now nothing guarantees that Member States will provide sufficient funding for biodiversity to contribute to reaching the agreed targets of the EU 2020 Biodiversity Strategy.

We welcome that public consultations involving partners and the assessment of environmental impacts including those on the climate is required for Major Projects. As such consultations and assessments can be done by "independent" experts paid via Technical Assistance, the independence of these processes must be guaranteed, and a "quality review" based on the Commission's methodology should ensure its quality.

3. Result orientation and ex ante conditions

- **Performance framework based on targets and indicators for all regulations**

One of the few new elements of the future Cohesion Policy, namely performance and result orientation, has been diluted dramatically. A performance framework is established but weakened compared to the Commission's proposal, and including only financial and output indicators – instead outcome or result indicators – are valid in reference to overall performance. With this backsliding towards simply reporting quantifiable outputs, an opportunity has been lost to improve the result-orientation of EU funds investments: milestones are postponed to 2018, and the "performance reserve" is disconnected from the actual achievement of quality results.

- **Ex ante conditionalities**

With the split of the Operational Programme into elements both obligatory i.e. needing Commission approval, and voluntary i.e. at Member States' discretion, the function of ex-ante conditionalities, namely to ensure compliance with principles of sustainable development and environmental protection requirements, has been degraded substantially.

4. Partnership principle and Code of Conduct

- **Partnership principle (CPR)**

The partnership principle is visible throughout the Common Provisions Regulation and environmental NGOs (Art 5) are included as stakeholders. However, a provision introduced by the Council states that it will be implemented "in accordance with their institutional, legal and financial framework" (Art 4.4), which potentially empties the substance of the regulation. We therefore call on the Commission to ensure that all provisions are properly implemented by Member States in the programming work.

Furthermore, the controlling function of Monitoring Committees has been weakened, voting rights for partners are not guaranteed, and where there were binding obligations, this has now been diluted to voluntary observations.

The Code of Conduct also only mentions the use of technical assistance for NGOs in term of financial support for travel costs. The real involvement of NGOs in discussions about the future Cohesion Policy requires far more than a budget for travel.

- **European Code of Conduct (CPR Art 5.3)**

Despite support from both the Commission and Council, the European Code of Conduct has been weakened to a list of best practices due to strong opposition within the Council, meaning that now the Code is no longer mandatory and therefore loses its potential to lead the upwards harmonisation of partnership practices with relevant stakeholders across Europe. This therefore limits the partnership principle to be carried out only “within the institutional, legal and financial framework of the MS”, stakeholder across Europe cannot count on a commitment to minimum standards.

3. Conclusion and recommendations

Several elements and provisions have been weakened while only a few have been improved over the version from the Commission.

Moreover where improvements have been made, their real efficacy will depend on implementation in the future Partnership Agreements and Operational Programmes. We call on the Commission and Member States to ensure that the programming work is improved to phase out harmful subsidies and translate the sustainable development potential for a better Cohesion Policy.

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