

Response from REGLEG to the Consultation on the Common Strategic Framework

REGLEG welcomes the early publication of the Commission Staff Working Document “Elements for a Common Strategic Framework 2014 to 2020”¹. The documents together with its two annexes allow an overview of the content of a possible future CSF. Giving its importance for the cohesion policy 2014 – 2020 an open and transparent way of developing this key document is of high relevance.

REGLEG recalls its position that it is in favour of a cohesion policy for all regions with a strong involvement of the regions in implementing the policy, which will be a key for the success of this policy and also the Europe 2020 strategy, the overarching framework for the future of the European Union. The failure of the Lisbon Strategy clearly shows the importance of a strong involvement of all territorial actors. Regions and especially regions with legislative powers have a key role to play in such an integrated and comprehensive approach to territorial development. The multiannual character of cohesion policy must be taken into account when designing the whole framework.

REGLEG notes with satisfaction the role regions play in the CSF. Their importance is clearly underlined in the Chapters 2 “Thematic Objectives and Key Actions”, 4 “Reinforcing Coordination and Integration” and 6 “Meeting the Territorial Challenges of Smart, Sustainable and Inclusive Growth”. REGLEG regrets that the proposed text is lacking clarity, which may make it difficult to apply it in reality. This is also caused by its unclear legal nature.

The following remarks focus on key aspects of the CSF:

1) Nature and Legal Form of the Future CSF:

Art 2 para 2 and Art 10 -12 of the Commission proposal on the General Regulation² define the nature and legal form of the CSF.

Art 2 para 2 Definitions

'Common Strategic Framework' means the document translating the objectives and targets of the Union strategy for smart, sustainable and inclusive growth into key actions for the CSF Funds, establishing for each thematic objective the key actions to be supported by each CSF Fund and the mechanisms for ensuring the coherence and consistency of the programming of the CSF Funds with the economic and employment policies of the Member States and of the Union;

Article 10 Common Strategic Framework

In order to promote the harmonious, balanced and sustainable development of the Union, a Common Strategic Framework shall translate the objectives and targets of the Union strategy for smart, sustainable and inclusive growth into key actions for the CSF Funds.

¹ Commission Staff Working Document “Elements for a Common Strategic Framework 2014 to 2020”, SWD(2012) 61 final from 14 March 2012, abbreviated in this text with CSF.

² 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 final from 6 October 2011.

Article 11 Content

The Common Strategic Framework shall establish:

- (a) for each thematic objective, the key actions to be supported by each CSF Fund;
- (b) the key territorial challenges for urban, rural, coastal and fisheries areas, as well as for areas with particular territorial features referred to in Articles 174 and 349 of the Treaty, to be addressed by the CSF Funds;
- (c) horizontal principles and policy objectives for the implementation of the CSF Funds;
- (d) priority areas for cooperation activities for each of the CSF Funds, where appropriate, taking account of macro-regional and sea basin strategies;
- (e) coordination mechanisms among the CSF Funds, and with other relevant Union policies and instruments, including external instruments for cooperation;
- (f) mechanisms for ensuring the coherence and consistency of the programming of the CSF Funds with the country-specific recommendations under Article 121(2) of the Treaty and the relevant Council recommendations adopted under 148(4) of the Treaty.

Article 12 Adoption and review

The Commission shall be empowered to adopt a delegated act in accordance with Article 142 on the Common Strategic Framework within 3 months of the adoption of this Regulation.

Where there are major changes in the Union strategy for smart, sustainable and inclusive growth, the Commission shall review and, where appropriate, adopt, by delegated act in accordance with Article 142, a revised Common Strategic Framework.

Within 6 months of adoption of a revised Common Strategic Framework, Member States shall propose amendments, where necessary, to their Partnership Contract and programmes to ensure their consistency with the revised Common Strategic Framework.

It is clear from the wording of the articles that the CSF is a very important policy framework document, which directly connects the Europe 2020-strategy with the five CSF-funds. The CSF will shape the future EU cohesion policy, having a direct effect on the partnership contracts and programmes. Both have to be consistent with the CSF, which includes also necessary changes after a possible revision of the CSF.³ It is of binding nature, its importance is also underlined by the fact that it replaces the current separate four strategic guidelines by creating a single framework for five funds. This view is further strengthened by recital 14 and the definitions in Art 11 lit a – f, defining the content of the CSF. Therefore the adoption of the CSF as delegated act seems not to be in line with the TFEU. Art 290 para 1 defines delegated acts as “non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act” but reserves “the essential elements of an area [...] for the legislative act”, explicitly denying the possibility to define these elements in a delegated act. This is also supported by the case law of the Court of Justice, that proposals “giving concrete shape to the fundamental principles of a Union Policy framework” are an essential element of this legislative framework.⁴ Therefore an adoption as delegated act would contradict primary law.

REGLEG proposes to adopt the CSF as an annex to the regulation in the ordinary legislative procedure. This would also offer the possibility to the Commission to amend non essential parts of the CSF by means of delegated acts (Art 141 – 142 General Regulation proposal), therefore combining a democratic decision on the CSF with a certain grade of flexibility afterwards.⁵ The proposed annex should comprise just the essential parts of the CSF, which

³ Art 12, art 15 para 1 – 3, art 25 para 1 – 3, art 26 para 1 – 2.

⁴ For example C-240/90 Germany / Commission para 36 -37.

⁵ Other theoretically possible options may be a separate regulation after a new proposal from the Commission (the legal base in primary law for cohesion policy just foresees the adoption of regulations) or the

can mainly be found in part I of the working document. Part II – the annexes – in the opinion of REGLEG should be of non-binding character.⁶ These two annexes give mainly examples for key actions and general statements on implementation principles as well as complementarity and coordination for each thematic objective.

2) Strategic Nature, Thematic Objectives, Key Actions:

The future cohesion policy should combine a top down strategic approach with a bottom up approach guaranteeing for flexibility. Parts of the CSF just cite the regulations, REGLEG misses the strategic element. The whole document should be shortened, giving the document a strategic nature. This would also prevent changes of the operational programmes and partnership contracts after a possible change of the CSF. Otherwise the draft provisions may lead to regular changes.⁷ This would also contradict the intention to simplify the implementation of Cohesion policy, which in the view of REGLEG comprises simplification for the final beneficiary and the reduction of administrative burdens for the public authorities managing the funds.

Furthermore REGLEG asks for clarification regarding the concept of key actions. They seem to be a new layer between the thematic objectives (Art 9 General Regulation) and the investment priorities of operational programmes (Art 87 para 2 lit c General Regulation) or a parallelism to the later. It is not clear from the text of the CSF and the General Regulation if the concept of key action comprises a kind of binding nature, limiting the flexibility of the operational programmes to choose the priorities best suited in a regional context. The non-binding character of key actions should be clarified in the text. Due to their good practice and recommendatory nature they should not be part of a legally binding text.

3) Coordination, Meeting the Territorial Challenges:

Coordination is a challenge and task for the European Union and the member state level. REGLEG believes that the new General Regulation and the CSF – both are valid for five funds – are an important step in the right direction. The CSF is too vague about the coordination on EU-level, the relevant chapters in Annex I mainly give examples, missing the strategic character.

It is also very ambitious to try to coordinate the regional dimension of all relevant EU-policies with the help of the CSF. This could distract from the core business of cohesion policy – the promotion of an overall harmonious development and the strengthening of the economic, social and territorial cohesion. One main aim should be to avoid double financing and to allow a better coordinated and appropriate use of the CSF Funds.

With regard to Annex II REGLEG underlines that also transnational and interregional cooperation are valuable tools for the implementation of the Europe 2020-strategy and for the dissemination of good practices.

implementation in the General Regulation. Both have disadvantages, the first one is a new legislative procedure, which timing is not in line with the General Regulation, the second one the integration of a big amount of text in the already detailed General Regulation. It is of utmost importance that the implementation phase of Cohesion policy 2014 – 2020 is not decelerated, therefore the option of a new legislative proposal with the CSF is in reality not a practical one.

⁶ For example as a communication, a staff working document or guidelines.

⁷ Art 12 indent 3 states an obligation for member states to ensure the consistency also with a revised CSF.

For the territorial development regions will be key actors for involving the local and sub-regional level, especially outside the scope of possible Community Led Local Development and Integrated Territorial Investments approaches.

REGLEG welcomes the five elements the Commission proposes for designing partnership contracts and programmes. They will be successful if the regions and other relevant actors are involved from the beginning on. The acknowledgement of this fact by the Commission by at the same time referring to the individual institutional framework of each member state in the working document on the European Code of Conduct on Partnership⁸ respects the principles stated in the TEU on the national identity and at the same time the subsidiarity principle.

⁸ Commission Staff Working Document “The partnership principle in the implementation of the Common Strategic Framework Funds – elements for a European Code of Conduct on Partnership” SWD(2012) 106 final from 24 April 2012 page 6.

REGLEG

REGLEG, the Conference of regions with Legislative Power, is a network bringing together the regions with legislative power within the European Union. Regions with legislative power have their own governments and parliaments. They have often comparable responsibilities to those of Member States within their areas of competence.

Regions with legislative power exist in Belgium, Germany, Austria, Italy, Spain, Portugal, Finland and the United Kingdom. In 2010, the cumulative budget of all regions with legislative powers reached more than 800 billion.

Among the regions of the network, 20 form the Coordination Committee (CoCo). The CoCo provides a framework for discussion on policy ideas, drafting reports and statements, information exchange, communication, policy development and other related activities such as the organization of conferences, and forming of sub-groups on areas of specific interest to some or all of its members. The political decision making body is the Presidency Conference.

2012 Vienna holds the presidency of REGLEG.

More information: www.regleg.eu