



**European Committee
of the Regions**

Commission for Citizenship, Governance,
Institutional and External Affairs

January 2017

**CONSULTATION OF
THE SUBSIDIARITY EXPERT GROUP AND
RELEVANT DECISIONS OF NATIONAL AND REGIONAL PARLIAMENTS**

ON

**SUBSIDIARITY AND PROPORTIONALITY RELATED ASPECTS
OF
THE FINANCIAL RULES APPLICABLE TO THE GENERAL BUDGET OF THE UNION**

SYNTHESIS AND ANALYSIS

Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council

COM (2016) 605 final

Disclaimer:

This document does not seek to reproduce all the contributions to the consultation and the decisions of national/regional parliaments, but rather to synthesise the main points. It is not binding on the Committee of the Regions and does not prejudice the final content of its relevant opinion/s.

1. Introduction/background

The legislative proposal "Financial rules applicable to the general budget of the Union"¹ was included in the **CoR Subsidiarity Work Programme 2017** upon the suggestion of the COTER Commission Chair. The COTER commission had raised doubts if the entire proposal would fall under an area of exclusive competence of European Union law and requested an assesment, with particular regard to the EU spending rules allowing the transfer of ESI funds allocations to other centrally managed programmes such as the EFSI.

Therefore, the **Subsidiarity Expert Group**² was asked to contribute to the subsidiarity and proportionality analysis of relevant aspects of the proposals. The consultation ran from 20 December 2016 to 18 January 2017 and received **one contribution** from an Austrian respondent³ representing a region with legislative powers.

Until 23 January 2017, no reasoned opinions of national parliaments/chambers thereof have been issued with regard to the proposal⁴ and no positions of regional parliaments have been published on REGPEX⁵. Only the **German Bundesrat** has issued **a contribution in the framework of political dialogue**, which is analysed in this report. However, the Early Warning System deadline has yet to be set and the rapporteur will therefore be informed of any further subsidiarity/proportionality relevant decisions of national parliaments.

The following report and any additional information will be forwarded to **Michiel Rijsberman (NL/ALDE)**, rapporteur of the relevant CoR opinion, for him to take into account for the drafting of his opinion, particularly for the **assessment of compliance with the principles of subsidiarity and proportionality**.

Rule 55.2 of the Rules of Procedure of the CoR specifies the following:

"Committee opinions on proposals for legislative acts in areas not falling within the Union's exclusive field of competence shall express a view on the proposal's compliance with the principles of subsidiarity and proportionality."

Consequently, the draft opinion will have to contain such an assessment.

1 Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014,(EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council, [COM \(2016\) 605](#)

2 The CoR Subsidiarity Expert Group currently includes 13 members from institutions that are members of the Subsidiarity Monitoring Network.

3 Austrian expert nominated by REGLEG.

4 <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160605.do>

5 <http://portal.cor.europa.eu/subsidiarity/regpex/Pages/default.aspx>

2. Synthesis and analysis of contributions and parliamentary decisions

2.1 Legal basis

The European Commission states in the Explanatory Memorandum that the Proposal "*is based on Article 322 of the Treaty on the Functioning of the European Union (TFEU) for the part relating to the revision of the Financial Regulation and on the sectoral legal basis for the legislative acts modified by the second part*".

The SEG respondent believes that the legal basis chosen by the European Commission, article 322 TFEU, only justifies the part of the Proposal regarding the revision and harmonisation of the budgetary rules of the Union. Nevertheless, the SEG respondent states that, the new proposals on financial instruments and conditions⁶ have a substantial impact on their beneficiaries and how they apply and deal with European funds. Also, the different managing authorities at national and regional level are substantially concerned by the proposals.

Furthermore, besides the Proposal's main objectives of simplification and flexibility, European Commission wishes more generally to combat obstacles in the implementation of European funds, specifically those related to implementing of cohesion policies and objectives, and expects an increase of the impact and results of the concerned policies on the ground. A range of 'budgetary instruments' (e.g. financial framework partnerships agreement, 'single lump sums') which are now proposed to be introduced horizontally still exist in legal acts, and are based on their core and individual legal base. The introduction of a "flexibility cushion" for unforeseen needs and new crises is not only a financial issue, but depends on the content of the crises and the defined sectors, for which the cushion could be used. Some amendments (e.g. possibility for a new funding priority within the ERDF or the EARDF or the financing of sharp drops in income in specific sectors) are suggested which are to be regulated within the cohesion policy or the agricultural policy. These are substantial extensions of the scope.

Thus, in formal terms, the Commission could have indicated specific sectoral legal bases to cover the content of the Proposal in its entirety.

The German Bundesrat has not raised any issue with regard to the legal base of the Proposal.

SUGGESTION FOR THE DRAFT OPINION

The rapporteur might wish to raise the issue of the legal basis. It could be stressed that the proposed measures have a substantial effect on the manner in which beneficiaries (in particular, managing authorities at local and regional level) deal with European funds.

⁶ e.g. lump sums, unit costs, flat rates, recognition of voluntary work, awards of grants, exclusion criteria, removing the non-profit rule.

2.2 Subsidiarity⁷

In the Explanatory Memorandum the Commission provides the following justification in terms of subsidiarity: "*The adoption of EU general financial rules and of the modifications proposed to the sectoral legislative acts falls under the exclusive competence of the EU*".

The respondent to the consultation disagrees with the view of the Commission that the modifications proposed to the sectoral legislative acts, particularly regarding Art. 265 of the Proposal fall under the exclusive competence of the EU. He believes that the specific aims of the proposed Regulation, the proposed measures and impacts of the amendments concerning financial issues of project and program implementation, have substantial effects on its beneficiaries and the content and procedure of policy implementation on the ground. In some cases these extend the scope and applicability beyond the still regulated funding possibilities and would influence the results and success of EU instruments in this specific sector.

The proposed modifications would therefore have an impact on cohesion policy, which falls under the area of shared EU competence where the subsidiarity principle applies. In formal terms, the part of the proposal concerning the sectoral legislative acts is not in conformity with the subsidiarity principle.

Regarding the content of the suggested amendments, such as the possibility for Member States to use ESI instruments in case of crisis or to add a specific investment priority (i.e. for migrants and refugees for ERDF measures), appears to conform with the subsidiarity principle, as the Treaty opens a wide range of possible actions which can be chosen by the EU legislator to foster cohesion.

The German Bundesrat (without issuing a reasoned opinion)⁸ welcomes the aim of the Proposal to simplify the financial rules applicable to the general budget and make them more flexible. However, these simplifications must not endanger proper budget management. Furthermore, the Bundesrat has great concerns if the large amount of legislative amendments would really lead to a simplification or rather than an increase in complexity.

SUGGESTION FOR THE DRAFT OPINION

The rapporteur might wish to highlight the need to better justify the proposed modifications to the sectoral legislative acts, particularly Art. 265 of the Proposal, in terms of subsidiarity.

7

Art.5 (3) TEU: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."

8

<http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160605.do>

2.3 Proportionality⁹

In the Explanatory Memorandum, the Commission provides the following justification in terms of proportionality:

"This proposal focused on simplification and does not contain rules which would not be necessary to achieve the objectives of the Treaty. In particular, the modifications to the sectorial legislative acts proposed in its omnibus part are limited to those necessary to allow the simplifications proposed in the Financial Regulation to deploy their full effect on the ground."

According to the respondent to the consultation, the provided justification is very brief and general. However, the proposal is considered to comply with the principle of proportionality. It is also in line with the approach of the European Court, as its aims, expectations, amendments and proposed new measures for additional possible funding regarding the sectorial content, seem not to be "inappropriate" for meeting the objectives of simplification, flexibility, increase of implementation and combating procedural obstacles. Furthermore, the proposal maintains some leeway for national authorities as they can themselves choose to apply the new possibilities of funding within their ESI programs.

The reason for the requirement to justify draft legislative acts is to provide EU citizens and their elected representatives sufficiently detailed information to understand the qualitative and quantitative reasons leading to a conclusion that "a Union objective can be better achieved at Union level". In its Better Regulation Agenda¹⁰ the European Commission has committed itself to including "a more thorough explanation of how the initiative meets the twin tests of subsidiarity (why the goal cannot be achieved by the Member States alone) and proportionality (why the measure proposed does not go further than what is needed to meet its goal) and considered this as "essential to promote accountability".

The German Bundesrat has not raised any issue with regard to proportionality.

SUGGESTION FOR THE DRAFT OPINION

The rapporteur might wish to discuss the Proposal in light of the Commission's commitment to Better Regulation, in particular drawing attention to the fact that no impact assessment was carried out and justification in terms of proportionality is brief and general and not substantiated with the data.

2.4 Delegated powers of the European Commission

The clauses in the Proposal empowering the Commission to adopt delegated acts are a cause for concern for the German Bundesrat¹¹. In particular, the Art. 265 of the proposal contains a suggestion

⁹ The proportionality principle (Article 5.4 TEU) stipulates that the content and form of EU action shall not exceed what is necessary to achieve the objectives of the Treaties, i. e. the means proposed by the EU must be suitable and appropriate.

¹⁰ [COM\(2015\) 215](#), para 2.2

¹¹ <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160605.do>

to include additional clauses (in amendments suggested to the Art. 67 and 68 of the Regulation (EU) No 1303/2013) empowering Commission to adopt delegated acts. The German Bundesrat is of the opinion, that further delegated acts would make the current legislation more complicated and would run against the objective of the Proposal to simplify the rules.

However, such considerations concerning delegated powers do not directly touch on subsidiarity issues, but on the question of whether the requirements laid down in the legal bases for such empowerments, Article 290 of the TFEU, is respected, e.g. if the delegated powers are limited to non-essential elements of the relevant legislative act and if their objectives, content, scope and duration are explicitly defined. A more thorough examination would be needed, particularly regarding whether the conditions of Article 290 TFEU are met by every delegation.

In the consultation of the SEG, no issues were raised with regard to the delegated powers.

SUGGESTION FOR THE DRAFT OPINION

The rapporteur might wish to draw attention to the suggested additional clauses empowering the Commission to adopt delegated acts and highlight that this might increase the complexity of current legislation and might be against the declared objective of the Proposal, namely to simplify the rules.

3. Additional information

For the obligatory assessment of compliance with the principles of subsidiarity and proportionality in the draft opinion - as required by the rule 55.2 of the RoP - , the rapporteur might wish to refer to the arguments highlighted above.

The Subsidiarity team (in the CIVEX commission secretariat) is at the disposal of the rapporteur in case of any inquiries and can be contacted via email at subsidiarity@cor.europa.eu .