Review of the Balance of Competences between the United Kingdom and the European Union

Cohesion Policy

COMMISSIONED EVIDENCE FROM PROFESSOR C S BARNARD

Section A: Development of EU Competence

Introduction

1.1 Cohesion policy is a broad term that can mean different things in different contexts and to different people. It is often used synonymously with regional policy. For the purposes of this report, the focus will be on the economic, social and territorial cohesion of the EU[1], what this means and the measures taken to promote this.

1.2 For the EU, cohesion policy is the EU's principal programme of solidarity between the regions. The reasons for EU involvement in regional policy have varied over time but four strands of justification can be found:[2] (1) EU policy can improve the efficiency of spending on regional policy by ensuring it is targeted to where it is most needed; (2) EU coordination of cohesion policies ensures that Member States do not engage in competitive outbidding to secure mobile investments; (3) the EU has a moral (and economic) need to address regional disparities: depressed regions benefit no one, nor can significant disparities in wealth be justified on social equity grounds;[3] and (4) EU involvement is necessary because regional disparities are an impediment to further integration.

1.3 This prompts Bachtler et al to describe cohesion policy as '"one of the most ambitious, complex and misunderstood areas of EU-decision making"[4] which seeks to address the 'seemingly intractable problem of territorial inequality, underpinned by multi-dimensional and somewhat ambiguous objectives on economic, social and territorial cohesion' while accounting for a major share of

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[1] The term EU is used throughout to include the European Economic Community and the European Community. When talking historically this report may use the term Community. The Treaty numbers used relet to the relevant period (eg Article 235 EEC for periods prior to the Amsterdam renumbering). A list of equivalences can be found in Table 7.
[2] See F. Wilsher, 'EU Cohesion Policy: Facts, Figures and Issues' in L. Hooghe, *Cohesion Policy and European Integration: Building Multi-level Governance* (Oxford, OUP, 1996), 28. See also the Padoa-Schioppa report, Efficiency, Stability and Equity: A Strategy for the Evolution of the Economic System of the European Community, Paris, 1989.
[3] In 1994 the Commission showed that income in the ten least prosperous regions (East Germany, Portugal and Greece) was one fifth that of the most prosperous regions (mainly in the core of the EU)
[4] Citing J. Peterson and E. Blomberg, *Decision-making in the European Union*, (London, Macmillan Press, 1999), 146.

the EU's budget.[5]

1.4 As this section will show, EU competence and policy in this area have expanded significantly since 1957. And the expenditure has also grown dramatically (see Table 1 for a summary)

Budget phases	Approximate annual budget	Total budget	% of EU budget
1989-1993	14 bn ecus	69 billion ecu	c. 20-25%
1994-1999	32 bn ecus	168 billion ecu	c.30%
2000-2006	38 bn euros	213 billion euros for the EU-15 between 2000-6 and 21.7 billion between 2004-6 for the EU-10	c.33%
2007-2013	50 bn euros	347 billion euros	c.36%
2014-2020	52 bn euros	351billion euros	c.34%

Fig 1 Summary of increases in expenditure on cohesion policy
Sources: ec.europa.eu/regional_policy/.../history.ppt, http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140106.pdf

1.5 This increase in expenditure has formed part of a wider political debate: about facilitating enlargement, budgets and further integration. For example, commentators argue that the doubling of the structural funds budget in 1988 was the price extracted by the poorest four countries for agreement to the Single European Act (SEA) 1986 which provided the impetus for creating a single market by 1992; and the budget reforms in 1992 and the establishment of the Cohesion Fund were the price for Spain and the other cohesion countries agreeing to the Danish opt-outs at Maastricht and further enlargement.[6] Yet the practical effect of these major budget increases is that cohesion policy is now the biggest vehicle for the redistribution of wealth in the EU (although many

[5] Bachtler et al, *EU Cohesion Policy and European Integration The Dynamics of EU Budget and Regional Policy Reform* (Ashgate, 2013), 11.
[6] Wilsher above n. 2, 30-1.

would argue it does much more than that[7]), at a time when national expenditure on regional policies, while often higher than EU expenditure, is in decline.[8]

1.6 While the story of significant increase in funds over the various budget perspectives is clear, what is much less clear is where the real power lies in controlling the programmes. There has been an ongoing fight between the Commission and the Member States and even within the Commission as to how much decision-making power the respective institutions should have in determining the design and implementation of policy instruments.[9]

1.7 This section outlines the development of the EU's Cohesion policy since the Treaty of Rome. It uses the main Treaty reforms and budget negotiations as the staging posts. Within the constraints of the balance of competence review, this report will focus only on the main developments and instruments. There is a wealth of detailed literature available to the interested reader who would like to know more.[10] Section B will focus more specifically on competence issues

Treaty of Rome

1.8 From its inception, the EU has recognised the challenges caused by different levels of economic development in its Member States. The preamble to the **Treaty of Rome** stated that the Member States were 'anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences between the various regions and the backwardness of the less developed regions'. Article 2 EEC therefore set the (then) Community's task to 'promote […] a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the Member States'.

1.9 Although the Treaty referred in general terms to reducing the differences between regions, the Treaty in fact contained few specific provisions as to how this might be achieved. However, five aspects of the Treaty can be identified as supporting the objective of cohesion, some more directly than others.

1.10 The first was the creation of the **European Investment Bank** (EIB) which was given task of 'facilitating the financing of projects for developing less developed

[7] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 34.
[8] Ibid.
[9] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf.
[10] See eg Bachtler et al, *EU Cohesion Policy and European Integration The Dynamics of EU Budget and Regional Policy Reform* (Ashgate, 2013), D. Allen, 'The Structural Funds and Cohesion Policy: Extending the Bargain to meet new Challenges' in Wallace et al (eds) *Policy Making in the European Union* (Oxford, OUP, 2010), 6th ed..

regions' (Article 130 EEC)[11]. However, the EIB was designed as an intergovernmental body, with its shareholders being the EU's Member States, so the Commission lacked the ability to control its activities.

1.11 The second was **transport policy** where the Treaty said the Commission should take into account the requirements of an appropriate regional policy and the needs of underdeveloped areas in examining rates and conditions that might involve an element of support or protection in the interests of particular undertakings or industries.[12]

1.12 The third was **state aid** policy. While generally Article 92 EEC prohibited state aid, Article 92(3) EEC recognised that, inter alia, aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment and aid to facilitate the development of certain economic activities or of certain economic areas might be permitted. The Commission had to approve such spending and thus Article 92 EEC was used to discipline the Member States to ensure the money was spent most efficiently. State aid policy thus became seen as a complement to the expenditure of EU cohesion funds.

1.13 Fourth was the **common agricultural policy** (CAP). The European Agricultural Guidance and Guarantee Fund (EAGGF) was set up by Regulation 25/1962 on the financing of the common agricultural policy. The Regulation was adopted under Articles 40, 43 and 199 to 209 EEC. The Fund's Guarantee Section financed, in particular, expenditure on the agricultural market organisations, the rural development measures that accompanied market support and rural measures outside of Objective 1 regions (this is considered below), certain veterinary expenditure and information measures relating to the CAP. This fund has now been replaced by the European Agricultural Guarantee Fund (EAGF).

1.14 Fifth, the Treaty of Rome provided for the establishment of another sectoral fund, the **European Social Fund (ESF)**. Its objective was to 'improve employment opportunities for workers and to contribute to the raising of their standard of living'. [13] It was to make employment of workers easier and increase their geographical and occupational mobility. [14] The Council, acting by a qualified majority on the basis of a proposal from the European Commission, and after consulting the Economic and Social Committee and the European

[11] The bank itself was established under Article 129 EEC.
[12] Article 80 EEC.
[13] Article 3 EEC.
[14] Article 124 EEC.

Parliament, [15] was to set out specific provisions to implement the ESF within the constraints of the relevant Treaty Articles.[16] The Maastricht Treaty streamlined these provisions, making it clear that the objectives of the ESF included 'facilitating [workers'] adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining'. Implementing decisions relating to the ESF were to be adopted by the Article 189c (cooperation) procedure. At Amsterdam this became the co-decision procedure.

1.15 The European Coal and Steel Community Treaty of 1951 had included a fund for the retraining and resettlement of workers. The ESF initially had similar goals but could be used more widely because it covered all sectors apart from agriculture. Support from the ESF was available for vocational retraining or resettlement allowances for the millions of migrants coming from (largely) Southern Italy, or as aid for workers whose employment was reduced or suspended as a result of a change in production, so that they might receive the same level of wages pending their full reemployment. In effect, as the European Commission noted, the ESF helped workers in sectors that were modernising or converting to new production techniques by providing retraining allowances, or made available resettlement help for those unemployed who had left their regions to find jobs elsewhere. [17] One of its early focuses was thus on managing the migration of workers within Europe.

1.16 The ESF was managed by the European Commission but on the basis of applications from Member States which were automatically accepted. [18] The applications were also made on an ad hoc basis and not as part of an overall strategic approach.

1.17 The first major reform of the ESF came in 1971. This involved a much bigger budget (with the amounts for 1972 and 1973 more than double those for the whole of the previous 12 years) and the targeting of specific groups such as young unemployed people and textile workers. Forty years later, in the Cohesion package 2014-2020, at least 23.1% of the total resources from European Regional Development Fund, Cohesion Fund and the ESF now have to be devoted to the ESF.[19]

Developments 1965-1985

[15] The term European Parliament is used to include the European Assembly.
[16] Art. 127 EEC.
[17] European Commission, *European Social Fund – 50 years Investing in People* (2007), http://ec.europa.eu/employment_social/esf/docs/esf_leaflet_en.pdf.
[18] Ibid.
[19] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140106.pdf, 2.

1.18 The need for a coordinated EU response to regional imbalances was recognised in the first Communication issued by the Commission on regional policy in 1965.[20] In 1968, a **Directorate General on regional policy** was created in the Commission. Four years later, the heads of state of government, met in Paris. In a prescient link to the EMU project which only became reality twenty years later, they declared their intention to 'give top priority to correcting the structural and regional imbalances in the Community which could hinder the achievement of Economic and Monetary Union'.

1.19 The heads of state meeting, on the eve of the first EU enlargement (which included Ireland and the UK), wanted to find a EU solution to regional problems. These problems were twofold: social and political. The social problems were the failure to address disparities in wealth between the Member States. As the Thompson report noted in 1973, 'No Community could maintain itself nor have a meaning for the people which belong to it so long as some have very different standards of living and have cause to doubt the common will of all to help each Member State to better the condition of its people'.[21] In other words, regional policy was seen as a 'crucial instrument for the identity of a European model of society, and for the legitimacy and viability of the whole political process of integration'.[22]

1.20 The political problems concerned the UK: it would be a net contributor to the EU budget, yet it would not be a significant beneficiary of the Common Agricultural Policy because its regional problems were connected with industrial decline, not agriculture. The heads of State therefore invited the EU institutions to create a Regional Development Fund whose interventions should permit the correction of the main regional imbalances in the Community and particularly those resulting from the preponderance of agriculture (this included Ireland), and from industrial change (this was particularly the case with the UK) and structural unemployment.

1.21 As a result, the **European Regional Development Fund (ERDF)** was set up, under Article 235 EEC, for a 3-year trial period.[23] The funding was allocated on national quotas, with Italy being the biggest recipient (40%), the UK the second biggest (28%). 'Pork-barrel' politics dominated the negotiations over the financial aspects of the ERDF.[24] The system of selecting and financing existing projects was annual. The regions eligible for assistance were based on existing assisted areas. The budget was 300 billion units of account (UA) in 1975, rising

[20] Commission, *La politique régionale dans le marché commun*, 1965.
[21] Commission, *Report on the Regional problems of the Enlarged Community*, COM(73) 550.
[22] G. Manzella and C Mendez, 'The turning points of EU Cohesion policy' http://www.eukn.org/E_library/Urban_Policy/The_turning_points_of_EU_Cohesion_policy, 9.
[23] Regulation 724/75 (OJ [1975] L73/1).
[24] Bachtler et al, above n. 10, citing Helen Wallace's important study.

to 500 billion UA in the following two years (about 5% of the Community budget).[25] This was used to fund projects predetermined by the Member States who retained control over every aspect of Fund's management and implementation.

1.22 The ERDF was thus essentially a form of budget rebate, with the Commission acting as 'treasurer signing blank cheques' to the Member States.[26] While, for obvious reasons, this was not popular with the Commission, the ERDF solution served as a reminder of just how politically sensitive regional policy was for many states.

1.23 In 1979 the Council amended the ERDF Regulation[27] and agreed to new guidelines. The national quotas were revised slightly with France's share up by 2% to take account of outermost territories and the UK's share falling slightly to 27.03%. There was an annual increase of the budget of 50% (although this still represented only 7% of the EU's budget). Assistance could now be provided, not only to areas designated by the Member States, but also to regions needing specific Community regional development measures. The introduction of this non-quota section was significant because for the first time it gave the Commission some independence over regional policy.

1.24 The period of **Euro-sclerosis** in the early 1980s, attributed in part to ongoing battles over the EU's budget and the size of the various Member State's contributions (especially the UK's),[28] meant that major changes did not occur to the EU's regional policy in this period. That said three developments are worthy of note. First, financial allocations to the ERDF were increased (although as a proportion of the EU's this remained stable).[29] Second, the distribution to the Member States was based on a set of indicative ranges instead of fixed quotas, thereby increasing the Commission's discretionary power. Third, the agreement on the **Integrated Mediterranean Programmes** (IMPs), intended to help Mediterranean regions facing increased competition from the accession of Spain and Portugal, provided a template for future EU action, since the IMPs were based on multi-annual programming and an integrated and participative approach.[30]

Single European Act 1986

[25] Manzella and C Mendez, above n. 21, 10.
[26] Ibid, 12.
[27] Regulation 214/79 (OJ [1979] L35/1)
[28] See further B. Laffan and J. Linder, 'The Budget: Who gets what, when, where and how?' in Walllace (eds), above n. X.
[29]Council Reg 1787/84 (OJ [1984] L169/1).
[30] Council Reg. 2088/85 (OJ [1985] L197/

1.25 The first major Treaty amendment to the Treaty of Rome came with the Single European Act (SEA) 1986. The main objective of the SEA was to kick-start the common market project, now renamed single or internal market. Most importantly, it set a deadline of completing the internal market by 31 December 1992 and it provided the EU with a more effective legal basis to deliver on this objective: Article 100a EEC (now Article 114 TFEU), which allowed for qualified majority voting in Council. However, in recognition that there would be losers in this process of creating the single market, and that market liberalisation could exacerbate existing regional imbalances, the SEA made more rational provision for regional assistance. It introduced a new Title into the Treaty on 'economic and social cohesion' with five separate Articles (Articles 130a-e) EEC.

1.26 A130a EEC contained the general commitment that 'In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular the Community shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions.' Article 130b EEC added that the '*Member States* shall conduct their economic policies, and shall co-ordinate them, in such a way as, in addition, to attain the objectives set out in Article 130a'. Further, the Community was to support the achievement of these objectives by the action it took through what were now referred to as the **structural funds** (EAGGF, ESF, ERDF), together with the European Investment Bank and the other existing financial instruments. Article 130b EEC also mandated a mainstreaming of the objective of economic and social cohesion: 'The implementation of the common policies and of the internal market shall take into account the objectives set out in Article 130a and in Article 130c and shall contribute to their achievement.'

1.27 A130c EEC explicitly recognised the role and function of the ERDF: 'to help redress the principal regional imbalances in the Community through participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions'.

1.28 Article 130d EEC then mandated the Commission to review the structural funds to rationalise their operation. The resulting proposal was to be adopted by the Council acting unanimously (Article 130d EEC). However, subsequent decisions taken in respect of the ERDF were to be taken by qualified majority voting (Article 130e EEC).

1.29 The need for reform of the EU's cohesion policy was driven not only by the advent of the single market but also by the imperative of **enlargement**. In 1981 Greece joined the EU; Spain and Portugal joined five years later. These new states brought increased regional disparities; the structural funds were an important means of bringing the wealth of these countries up to the EU average.

1.30 At the same time it was recognised that the existing cohesion funds were beginning to overlap and needed some coherence: while the ERDF was primarily a regional fund, the ESF and the Guidance section of the European

Agricultural Guidance and Guarantee Fund (EAGGF) set up under the Treaty provisions on agricultural policy increasingly also had regional dimensions.

The 1988 Reforms (first financial perspective 1989-1993)

1.31 The mandate in Article 130d EEC to review the structural funds led to ground-breaking reforms in 1988 which aimed to transform regional policy from 'an essentially intergovernmental budgetary transfer to .. a genuine regional development tool'.[31] The Council adopted the first 'coordination' regulation, Regulation 2052/88 on 'the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments',[32] based on Article 130d EEC. It introduced four key principles which have formed the cornerstone of the Structural Funds ever since:

- ***concentration***: on a limited number of objectives and focusing on the poorest regions
- ***partnership***: in the design and implementation of programmes, involving EU, national, regional and local actors, the social partners and NGOs
- ***programming***: move from annual to multi-annual programming, based on analysis, strategic planning and evaluation
- ***additionality***: EU expenditure must not substitute national expenditure

1.32 The partnership approach, while intellectually appealing, created considerable tension in certain Member States which were not used to having key decisions taken at a local level.[33] Nevertheless for a number of commentators, not only did the partnership approach reflect the principles of subsidiarity but it also heralded the birth of **multi-level governance** in the EU, where decision-making involves not just the EU institutions and the Member States but actors at all levels.[34] The language of multi-level governance is now expressly used in the 2014-2020 reforms to Cohesion Policy.

1.33 The Coordination Regulation identified five priority objectives for the structural funds (Objectives 1-5(b)), and prescribed which funds should be used to achieve those objectives (see table 2). It also emphasised that the EIB 'while performing the tasks assigned to it by Articles 129 and 130 of the [EEC] Treaty, shall cooperate in achieving the objectives set out in Article 1 of this Regulation in accordance with the procedures laid down in its Statute'.

1.34 In addition, the Coordination Regulation laid down standard administrative rules and envisaged decentralised management. The message sent out was that with 'more money' (the funding was doubled – see below) came more restrictions in respect of programming, evaluation and control.[35]

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[31] Manzella and Mendez, above, n. 21, 13.
[32] OJ [1988] L185/9.
[33] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 32.
[34] See eg L. Hooghe, *Cohesion Policy and European Integration: Building Multi-level Governance* (Oxfrod, Clarendon, 1996).
[35] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 27.

Objective number	Purpose	Relevant funds
1	Promoting the development and structural adjustment of the regions whose development is lagging behind	ERDF, ESF, EAGGF Guidance Section
2	Converting the regions, frontier regions or parts of regions (including employment areas and urban communities) seriously affected by industrial decline	ERDF, ESF
3	Combating long-term unemployment In 1993 this was revised to provide: combating long-term unemployment and facilitating the integration into working life of young people and of persons exposed to exclusion from the labour market	ESF
4	Facilitating the occupational integration of young people. In 1993 this objective was merged with objective 3 and a new objective 4 introduced, namely: facilitating the adaptation of workers of either sexton industrial changes and to changes in production systems	ESF
5a	With a view to reform of the common agricultural policy (from 1993 replaced by 'promoting rural development'): (a) speeding up the adjustment of agricultural structures (1993 'in the framework of the reform of the Common Agricultural Policy')	EAGGF Guidance Section (and from 1993 FIFG)
5b	With a view to reform of the common agricultural policy (from 1993 replaced by	EAGGF Guidance Section, ESF, ERDF

	'promoting rural development'): promoting the development (1993: 'and structural adjustment of') of rural areas	
6 (added in 1995)	Developing sparsely populated Nordic areas	ERDF, ESF, EAGGF Guidance, FIFG

Table 2: Objectives and means laid down by Regulation 2052/88 as amended, in particular, by Regulation 2081/93

1.35 Accompanying the Coordination Regulation were three Regulations on the specific structural funds:
- Regulation 4254/88 on the ERDF,[36] adopted under Article 130e EEC;
- Regulation 4255/88 on the ESF,[37] based on Articles 126 and 127 EEC; and
- Regulation 4256/88 on the EAGGF,[38] based on Article 43 EEC.

1.36 These landmark reforms were accompanied by a large budget increase – the so-called 'big bang', Delors I package. The budget rose from ECU 6.4 billion p.a. in 1988 to ECU 20.5 billion p.a in 1993, (from 16% to nearly 23% of the EU's budget). Objectives 1, 2, 5b and 6 were concentrated on regional policy and accounted for 85% of the funding; three objectives (3, 4 and 5a) applied Community-wide, having no geographical limitations, and received 15% of the funding.[39]

1.37 From 1988, structural fund expenditure was allocated to specific programmes. Ninety per cent of the programmes were initiated by the Member States which had to consult with their regional authorities. There was a three stage planning process:
(1) the Member State produced a **regional development plan** which explained how it intended to implement the priorities in the Community Strategic Guidelines ('analysis'); [40]
(2) the drafting of a **Community Support Framework (CSF)** embodying the response to the needs outlined in the plans ('coordination of intervention');
(3) the approval of **Operational programmes (Ops)** implementing the CSF priorities ('implementation').
Details of the content of the plans and the CSFs were contained in the Implementation Regulation.[41] For the period of 1994–99 more than 300 programmes were agreed in partnership between the Member States and the Commission, about half of them for Objective 1.

[36] OJ [1988] L374/15.
[37] OJ [1988] L374/21.
[38] OJ [1988] L374/25.
[39] Cohesion Report, 1996, 9.
[40] D. Allen, 'The Structural Funds and Cohesion Policy' in Wallace et al (eds), *Policy Making in the European Union* (Oxford, OUP, 2010), 6th ed.
[41] Council Reg. 4253/88 (OJ [1988] L374/1). There were separate implementing regulations for the three structural funds.

1.38 Between 1988 and 1999 the remaining 9% of the budget supported **Community initiatives.**[42] Under the different themes summarised in table 3 about 400 Community Initiative programmes were supported. In 2006 the Community Initiatives category was renamed **European Territorial Cooperation** and reduced to just 2.5% of overall expenditure. 1% of the finance was reserved for technical assistance and innovative measures. Most of this expenditure was decided by the Commission after calls for tender. The Community initiatives did create some space for those integrationists in the Commission who saw a strong, experimental role for the Commission in regional policy.[43]

Examples of Community Initiatives/European Territorial Cooperation	Purposes
1988-1999	
INTERREG	Cross-border, transnational and inter-regional cooperation
LEADER	Rural development
REGIS	Support in the most remote regions
ADAPT	Adaptation of the workforce to industrial change
SME	Small and medium-sized firms in disadvantaged areas
RECHAR	Adaptation to industrial change in coal-dependent areas
KONVER	Adaptation to industrial change in defence-industry related areas
RESIDER	Adaptation to industrial change in steel-dependent regions
RETEX	Adaptation to industrial change in textile-dependent areas
URBAN	Urban policy
PESCA	Restructuring the fisheries sector
EMPLOYMENT	Integration into working life of women , young people and the disadvantaged

[42] Adopted under Art. 5(5) of the General Regulation and Art. 11 of the Coordination Reg.
[43] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 26-27.

PEACE	Peace Initiative for Northern Ireland
2000-2006	
INTERREG III	Cross-border, transnational and inter-regional cooperation
LEADER+	Rural development
EQUAL	Transnational cooperation to combat all forms of discrimination and inequalities in the labour market
URBAN II	the economic and social regeneration of declining towns, cities and suburbs
2007-13	
EUROPEAN TERRITORIAL COOPERATION	Cross-border, transnational and inter-regional cooperation

Table 3: Community Initiatives and European territorial cooperation 1988-2013
Source: Allen (2009), with additions

The Maastricht Treaty 1992

1.39 The Maastricht Treaty made significant changes to the EU's powers in respect of cohesion policy.

1.40 First, the text of Article 2 was revised to provide 'The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, *and economic and social cohesion and solidarity among Member States*.' (emphasis added)

1.41 Second, the **Committee of the Regions** (CoR) was established to provide a forum in which regional issues could be ventilated.[44] This was a concrete manifestation of the idea of that sub-national actors should be involved in EU decision-making, an idea which was gaining ground at the time.[45]

1.42 The CoR was given powers to be consulted in areas specified by the Treaty, particularly in respect of economic and social cohesion where the provisions of

[44] Articles 198a-c EC.
[45] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 28.

Articles 130b, d and e were amended to allow for the participation of the Committee of the Regions (as well as the economic and social committee). Subsequent treaties have increased the powers of the CoR.[46] Most notably, the Amsterdam Treaty doubled the number of areas where the Council or Commission must consult the CoR, with the addition of: employment policy; social policy; environment; vocational training; transport. It also made provision for the European Parliament to consult the CoR. And by abolishing Protocol 16, the Amsterdam Treaty established administrative and budgetary autonomy for the Committee of the Regions (and the Economic and Social Committee).

1.43 The Treaty of Nice said that members of the CoR must hold a local or regional electoral mandate or be politically accountable to an elected local or regional assembly. It also lays down that members can now be appointed by qualified majority vote at the Council of Ministers, rather than requiring unanimous backing. Membership of the CoR terminates automatically if members lose the mandate on the basis of which they were appointed. The Treaty sets the maximum number of members of the CoR at 317 for an EU of 25 countries, rising to a maximum of 350 upon the accession of Romania and Bulgaria. The Lisbon Treaty made the CoR a semi-privileged applicant for the purposes of bringing judicial review proceedings under Article 263 TFEU as well as giving it the power to bring cases alleging a breach of the subsidiarity principle by the legislature in areas where it has the right to be consulted.[47]

1.44 Third, Article 130b was amended to require the Commission to submit a **triennial report** to the other institutions on progress made towards achieving economic and social cohesion. This report could be accompanied by appropriate proposals. This introduced an element of monitoring and accountability in the use of the funds.

1.45 The revised Article 130b also gave **new powers to the legislature to act**: ‘If specific actions prove necessary *outside the Funds* and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions.’ (emphasis added). This provision was at issue in *EP v Council (International Fund for Ireland)*[48] which is considered in chapter 2.

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[46] http://cor.europa.eu/en/documentation/brochures/Documents/6e7cae1f-be84-4300-b568-5d898cd55437.pdf.
[47] Art. 8 of the protocol on the application of the principles of subsidiarity and proportionality.
[48] Case C-166/07 [2009] ECR I-7135.

1.46 Fourth, given that the objective of Article 130d had been achieved by Regulation 2052/88, the Article was amended at Maastricht to provide that the Council, still acting unanimously on a proposal from the Commission but now after obtaining the assent of the European Parliament (not just consultation as before), and after consulting the Economic and Social Committee and the Committee of the Regions, was to 'define the tasks, priority objectives and the organization of the Structural Funds, which may involve grouping the Funds'. The Article continued that the Council, acting by the same procedure, must also 'define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments'.

1.47 Fifth, Article 130d was further amended to require the Council to set up a **Cohesion Fund**, by 31 December 1993, 'to provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure'. The first Regulation was 1164/94,[49] adopted under Article 130d. This part of Article 130d has now been repealed and replaced (see below). Unlike the structural funds, the Cohesion Fund is designed not for regions but for Member States. It is aimed at Member States whose Gross National Income (GNI) per inhabitant is less than 90 % of the EU average and, in the original version, which had a programme leading to the fulfilment of the conditions of economic convergence referred to in Article 104c of the Treaty (on avoiding excessive governments deficits). Originally four states satisfied these criteria (Greece, Ireland, Spain and Portugal).

1.48 The link between the Cohesion Fund and EMU is important. The most significant development realised by the Maastricht Treaty was the introduction of a timetable to achieve Economic and Monetary Union. Before participating, states had to ensure their budgets satisfied the Maastricht criteria (ie Member States had to avoid situations of excessive government deficits ie their ratio of planned or actual government deficit to GDP should be no more than 3 %, and their ratio of (general) government debt to GDP should be no more than 60 %). The link between the structural funds and EMU only became fully articulated in the 2014-2020 reforms.

1.49 The Cohesion Fund aimed to reduce economic and social disparities and to promote sustainable development. It is now subject to the same rules of programming, management and monitoring as the ERDF and ESF though the Common Provisions Regulation 1303/2013.[50]

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[49] OJ [1994] L130/1. It was amended by Reg. 1164/94 (OJ [1999] L161/57).
[50] Regulation (EU) No 1303/2013 (OJ [2013] L347/320).

1.50 Sixth, the Maastricht Treaty introduced the idea of trans-European networks, known as **TENS** for short, referred to in Article 130d. Article 129b provided: 'To help achieve the objectives referred to in Articles 7a [on the attainment of the internal market by 31 December 1992] and 130a and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting up of an area without internal frontiers, the Community shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

Within the framework of a system of open and competitive markets, action by the Community shall aim at promoting the interconnection and inter-operability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Community.'

1.51 Article 129c and d of the Treaty then spelt out what could be achieved to develop TENS. Article 129c(1) required the Community to:

- establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines are to identify projects of common interest;
- implement any measures that may prove necessary to ensure the inter-operability of the networks, in particular in the field of technical standardization.

The Community may also support the financial efforts made by the Member States for projects of common interest financed by Member States, which are identified in the framework of the guidelines, particularly through feasibility studies, loan guarantees or interest rate subsidies. The Community may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

1.52 Article 129d continued that the guidelines referred to in Article 129c(1) were to be 'adopted by the Council, acting in accordance with the procedure referred to in Article 189b [the newly introduced co-decision procedure] and after consulting the Economic and Social Committee and the Committee of the Regions'. It added that 'The Council, acting in accordance with the procedure referred to in Article 189c [cooperation procedure] and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt the other measures provided for in Article 129c(1)' This has now been replaced by the ordinary legislative procedure.

1.53 Seventh, to complement the EU's cohesion policies and the TENS projects, the Maastricht Treaty also introduced a new **Title on Industry**.[51] Article 130(1) provided 'The Community and the Member States shall ensure that the conditions necessary for the competitiveness of the Community's industry exist. For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

-speeding up the adjustment of industry to structural changes;

- encouraging an environment favourable to initiative and to the development of undertakings throughout the Community, particularly small and medium-sized undertakings;

- encouraging an environment favourable to cooperation between undertakings;

- fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

1.54 Article 130(2) indicated that the Member States were in the driving seat: they 'shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action'. The Commission can, however, take any useful initiative to promote such coordination. More generally, 'The Community shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of this Treaty'. However, the Article does give some power to the EU: 'The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament and the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1.

1.55 Finally, the Maastricht Treaty increased the involvement of the European Parliament in decision making (mainly through co-decision, known as the Article 189b procedure), under certain legal bases (see table 7). It also expressly recognised **subsidiarity and proportionality** for the first time as principles guiding the decisions of the legislature. Article 3b (now Article 5 TEU) provides that 'In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. It continues 'Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty'. As will be shown, these principles have become

[51] Art.6 TFEU makes clear that industry is an area in which 'The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States.'

important in shaping cohesion policy and are now expressly acknowledged in the 2014-2020 Cohesion Policy package. The Treaty of Lisbon (see below) makes clear that areas of non-exclusive competence (now referred to as ‘shared competence’), to which the principle of subsidiarity will apply,include social policy; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; trans-European networks (Article 4(2) TFEU).

1.56 A **protocol** annexed to the Maastricht Treaty recognised the need for a thorough evaluation of the operation and effectiveness of the structural funds, as well as reviewing the size of those funds (which it noted had doubled in real terms between 1987 and 1993 ‘implying large transfer, especially as a proportion of GDP of the less prosperous Member States’.) This review led to the 1993 reforms to structural funds.

1993 reforms (second financial perspective 1994-1999)

1.57 The 1993 reforms involved the adoption of a Coordination Regulation,[52] based on Article 130d, and specific Regulations in respect of the ERDF,[53] based on Article 130e; ESF,[54] based on Articles 126 and 127; EAGGF, Guidance Section, [55] based on Article 43; and the new fund, FIFG (Financial instrument for fisheries guidance),[56] based on Article 43. These measures all amended the 1988 Regulations. The major changes adopted in this period included the merging of Objectives 3 and 4 and the introduction of a new Objective 4, namely: facilitating the adaptation of workers of either sex to industrial changes and to changes in production systems (see Table 2).

1.58 The Coordination Regulation did not make many changes to the three stage approach to decision making introduced in 1989 (national plans, CSFs, Ops) but it did require national plans to be more detailed, especially about environmental issues, while at the same time allowing for a certain amount of simplification: Member States and the regions could submit single programming documents (SPDs) which comprised a single document, approved by the Commission and combining the data contained in a Community support framework and operational programme (integrated regional programme containing the programme's priorities, a short description of the proposed

[52] Regulation 1993/2081 (OJ [1993] L193/5).
[53] Regulation 1993/2083 (OJ [1993] L193/34).
[54] Regulation 1993/2084 (OJ [1993] L193/39).
[55] Regulation 1993/2085 (OJ [1993] L193/44).
[56] Regulation 1993/2080 (OJ [1993] L193/1).

measures and an indicative financing plan).[57]

1.59 Most importantly, the Edinburgh European Council agreed to the Delors II package: a significant increase in budget to ECU 32 billion p.a, ECUs 153 billion in total, for the structural funds, and ECU 15 billion to the Cohesion Fund, about 30% of the EU budget.

1999 reforms (for the budget perspective 2000-2006)

1.60 The context of the 1999 reforms was the largest ever **enlargement** of the EU, with 10 new states joining in 2004.[58] This historic expansion increased the EU's population by 20% but only increased its GDP by 5%. There were two strands to the 1999 reforms. First, there was a review of existing structural funds and a push to make them more efficient, by simplifying the design and the procedures. This led to the enactment of a new 'General Regulation',[59] adopted under Article 161 EC, replacing the coordination regulation and part of the implementing regulation, plus fund specific regulations for each of the other funds: ERDF,[60] adopted under Article 162 EC; ESF,[61] adopted under Art. 148 EC; EAGGF,[62] adopted under Article 36 and 37 EC; FIFG,[63] adopted under Article 37 EC; together with five implementing regulations. Following the Amsterdam reforms, the European Parliament was involved for the first time in the adoption of the ERDF and ESF Regulations by way of the co-decision procedure.

1.61 Most notably, these reforms led to a reduction in the number of priority objectives (two territorial, and therefore for specific regions, and one – education and employment – which was horizontal and applied to all regions) (see Table 4). Expenditure was increased by the Berlin European Council (March 1999) to Eur 195 billion over seven years for the three structural funds (ERDF, ESF, EAGGF, Guidance section) and Eur 18 billion over seven years for the Cohesion Fund. This accounted for about 33% of the EU budget. The European Council also agreed the 'Berlin formula' which has formed the general basis for allocating structural funds ever since.[64]

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[57] http://europa.eu/legislation_summaries/regional_policy/provisions_and_instruments/l60014_en.htm
[58] See generally, Commission, Agenda 2000: For a stronger and wider Union, Communication of the European Commission COM(97) 2000.
[59] Council Regulation 1260/99 (OJ [1999] L 161/1).
[60] EP and Council Regulation 1783/99 (OJ [1999] L213/1)
[61] EP and Council Regulation 1784/99 (OJ [1999] L213/5).
[62] Council Regulation 1257/99 (OJ [1999] L160/80).
[63] Council Regulation 1263/99 (OJ [1999] L161/54).
[64] https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/ACFB2.html

Objective	Purpose	Funds	Funding for period 2000-6	Other comments
1	Promotes the development and structural adjustment of regions whose development is lagging behind, i.e. whose average per capita GDP is less than 75 % of the European Union average.[65]	ERDF, ESF, EAGGF Guidance section, FIFG	69.7 % of the total allocation i.e. EUR 135.9 billion	Largest part of the budget; almost 20 % of the Union's total population is affected by measures taken under this Objective
2	Contributes to the economic and social conversion of regions in structural difficulties other than those eligible for the new Objective 1	ERDF, ESF	11.5 % of the total allocation i.e. EUR 22.5 billion	It brings together the former Objectives 2 and 5(b) and other areas facing the need for economic diversification. Overall it coverS areas undergoing economic change, declining rural areas, depressed areas dependent on fisheries and urban areas in difficulty. No more than 18 % of the Union's population is covered by this Objective.
3	all the measures for human resource development outside the regions eligible for Objective 1	ESF	12.3 % of the total allocation i.e. EUR 24.05 billion	This Objective replaces the former Objectives 3 and 4. It is the reference framework for all the measures taken under the new Title on employment inserted into the Treaty by the Treaty of Amsterdam and under the European employment strategy.

Table 4: The 1999 reforms to the objectives of the structural funds

1.62 An **absorption cap** was also introduced. As the House of Lords Select Committee explains, ‘The amount allocated to each Member State depends on the population of regions or Member States falling within the various objective categories and the various allocation formulae which differ between the objectives. However, the size of the funds for which the new Member States would be eligible under the allocation formulae is so large that there are doubts

[65] This new Objective also covers the most remote regions (the French overseas departments, the Azores, Madeira and the Canary Islands) as well as the areas eligible under the former Objective 6 (areas with low population density) created by the Act of Accession of Austria, Finland and Sweden

as to whether they have the capacity to use them efficiently. Consequently, an absorption cap based on a sliding scale, related to the Member States' GNI per head, has been introduced; while this applies in theory to all Member States, in practice the constraint is only triggered for some of the new Member States. For example, the cap for countries whose average GNI per head in 2002/3 was less than 40% of the EU average limits the total contribution of the Funds to about 3.8% of GNI. This can result in a reduction of around a half of the funds available for a number of the new Member States, although the amounts allocated can still amount to around 20% of total public and private investment in these countries.[66]

1.63 The absorption cap was applied from 2007. It use has been controversial. While it may be true that some very poor regions cannot make effective use of such large sums of money, it undermines the principle of the cohesion funds that the poorest regions receive the largest amounts of money.

1.64 The 1999 reforms also saw tighter controls over expenditure: the responsibilities of the national managing and paying authorities were clarified and programme management was speeded up using financial discipline and the ‘n+2’ rule which provided that failure to give evidence of the proof of payment within two years meant that the allocation was lost.

1.65 So far we have looked at the first dimension of the 1999 reforms: the reform of the existing funds. The second dimension of the reforms was the introduction of the **pre-Accession instruments**:
- ISPA,[67] adopted under Article 308 EC, with a budget of euros 7.3 billion, largely for the environment and transport;
-Phare,[68] also adopted under Article 235 EEC/Article 308 EC, with a budget of euros 7.3 billion, for capacity building (which had already been in existence since 1989);
- SAPARD,[69] with a budget of euros 7.3 billion, for rural development

1.66 Allen notes a contradiction in the Commission’s approach towards the management of the existing funds and the new pre-Accession Instruments.[70] He says that the Commission maintained tight control over pre-accession funding while at the same time devolving budgetary control over the structural funds to the existing Member States. Member State were assigned core responsibilities for programme content, management, monitoring, evaluation and control. Further, the single programming document (SPD) was the

[66] House of Lords Select Committee report, *The Future of EU Regional Policy*, nineteenth report, 2008, para. 35.
[67] Council Regulation 1267/1999 (OJ [1999] L161/73).
[68] Coucil Regulation 3906/89 (OJ [1989] L375/11).
[69] Council Regulation 1268/99 (OJ [1999] L161/87).
[70] Above n. X.

mainstreamed, leaving the CSF/OP format to larger Objective 1 programmes.[71]

1.67 A new financial instrument was also set up in this period, the **European Union Solidarity Fund.** It provided urgent aid to regions suffering from major catastrophes that causes damage assessed at over EUR 3bn in 2002 prices. This Regulation was based on Article 159 and 308 EC.[72] It has been used for 56 disasters covering a range of different catastrophic events including floods, forest fires, earthquakes, storms and drought. 23 different European countries have been supported so far for an amount of more than 3.5 billion €. [73] The UK has claimed from the Fund on one occasion – EUR 166m in 2007 to deal with substantial flooding across the country and newspaper reports suggest that the UK is going to apply again for the floods int eh South-West of England in winter 2014.

1.68 A proposal is being considered, to be adopted under Article 175 TFEU and Article 212(2) TFEU, to amend the 2002 Regulation to make the Fund 'quicker to respond and more visible to citizens, simpler to use and its provisions clearer'.[74]

Lisbon Strategy 2000-2010

1.69 At the Lisbon summit in March 2000[75] the Union set itself a new and (over)-ambitious strategic goal 'to become the most competitive and dynamic knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion'.[76] The strategy had three, mutually interdependent limbs:

- an economic limb (making the EU more competitive while sustaining a stable economy)
- an environmental limb (especially sustainable development), and
- a social limb (modernizing the European social model, investing in people and combating social exclusion).

This strategy was designed to enable the Union to regain 'the conditions for *full employment*' (not just a high level of employment as laid down by Article 9 TFEU), and 'strengthening regional cohesion in the European Union'.

[71] Manzella and Mendez, above n. 21, 17.
[72] Council Reg. 2012/2002 (OJ [2002] L311/3)
[73] http://ec.europa.eu/regional_policy/thefunds/solidarity/index_en.cfm.
[74] COM(2013) 522. An earlier proposal for amendment (COM(2005) 108 was not adopted by the Council.
[75] Presidency Conclusions, 24 March 2000.
[76] Para. 5.

1.70 The Lisbon objectives were to be achieved by ‘improving existing processes, introducing a new **open method of coordination** at all levels coupled with a stronger guiding and coordinating role for the European Council’.[77] The Presidency Conclusions describe the Open Method of Co-ordination as the means of spreading best practice and achieving greater convergence towards the EU’s main goals by helping Member States develop their own policies.[78] Implementation of OMC involves tools such as indicators and benchmarks as well as the exchange of experiences, peer reviews and the dissemination of good practice. In particular, the Lisbon and subsequently Stockholm European Council set the EU the objective of reaching an overall employment rate of 70 per cent by 2010, an employment rate of over 60 per cent for women and employment rate among older men and women (55–64) of 50 per cent.[79]

1.71 OMC was the major innovation introduced by the Lisbon strategy, albeit it had already been used in the **European Employment Strategy** (EES), launched in 1997 by the Luxembourg European Council[80] and given a legal basis by the Amsterdam Treaty. The Luxembourg European Council noted that ‘The issue of employment is central to the concerns of Europe's citizens and every effort must be made to combat unemployment, the unacceptable level of which poses a threat to the cohesion of our societies’ It expressed the hope that ‘the forthcoming reform of the Structural Funds [in 1999 – see above] will be based on experience acquired hitherto so as to make optimum use of the Funds to serve employment needs wherever possible in the framework of the objectives assigned to them while respecting their primary purpose, which is to enable regions lagging behind to catch up’. The revised Objective 3 was intended to address this. The ESF is the principal instrument for implementing the EES.

1.72 The Lisbon Strategy, as launched in 2000, made only one reference to the structural funds: under the ‘promoting social inclusion’ section of the third limb (‘modernising the European Social Model’), the European Council invited the Council and the Commission to ‘mainstream the promotion of inclusion in Member States' employment, education and training, health and housing policies, this being complemented at Community level by action under the Structural Funds within the present budgetary framework’. The Commission did, however, more clearly articulate the link between the role of the structural funds

77 Para. 7. The Commission’s social policy agenda goes further. The Commission says that it does not ‘seek to harmonise social policies. It seeks to work towards common European objectives and increase coordination of social policies in the context of the internal market and the single currency’ (COM(2000)379, 7).

78 Lisbon European Council, 23 and 24 March 2000, para. 37.

79 Stockholm European Council, 23 and 24 March 2001, para. 9.

80 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00300.htm

and the attainment of the Lisbon and EES goals in its Cohesion report 2004.[81]

1.73 In its 2005 mid-term review of the Lisbon strategy, the Brussels European Council recognized that there were significant delays in reaching the Lisbon targets. In the Lisbon relaunch the European Council re-focused the priorities on growth and employment.[82] The role of the structural funds was given greater priority: 'To achieve these [Lisbon] objectives, the Union must mobilise to a greater degree all appropriate national and Community resources – including the cohesion policy – in the Strategy's three dimensions (economic, social and environmental) so as better to tap into their synergies in a general context of sustainable development'. It emphasised that the financial perspective for 2007-2013 would have to provide the Union with adequate funds to carry through the Union's policies in general, including the policies that contribute to the achievement of the Lisbon priorities.

2006 Reforms (for the budget perspective 2007-2013)

1.74 And the budget negotiations delivered: the budget for the cohesion funds increased to about 50 billion euros per annum, about 36% of the EU budget, which now had to take into account the accession of Bulgaria and Romania in 2007. Rural development and fisheries funds were now outside the cohesion policy. They came under the new European Agricultural fund for regional development (EAFRD) and the European Fisheries Fund (EFF).The Cohesion Fund was integrated into the structural funds programming. This was part of the most radical overhaul of the structural funds since 1988, an overhaul which included replacing Objectives 1, 2 and 3 with three new objectives: convergence (broadly mapping old Objective 1), regional competitiveness and employment, and European territorial cooperation[83] (the detail is set out in Table 5).

1.75 Once again, there was a General Regulation,[84] and specific measures for the now three separate funds: the Cohesion Fund Regulation,[85] adopted under Article 161(2) EC; the ERDF Regulation,[86] adopted under the first paragraph of

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81 http://ec.europa.eu/regional_policy/sources/docoffic/official/reports/pdf/cohesion3/cohesion3_part3_en.pdf.

82 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/84335.pdf, paras 6 and 7.

83 This objective covers the Northern Ireland Peace Programme http://ec.europa.eu/regional_policy/activity/ireland/index_en.cfm.

84 Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 (OJ [2006] L210/95)

85 Council Regulation 1084/2006 (OJ L210/79).

86 Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund (OJ [2006] L210/1)

Article 162 and the second subparagraph of Article 299(2) EC,[87] the ESF Regulation[88] adopted under Article 148 EC, and a single implementing regulation[89] introduced by the European Commission. Together these measures focused more on the question of growth and jobs.

1.76 This time a new Regulation on **European Grouping of Territorial Cooperation** (EGTC)[90] was adopted under third subparagraph of Article 159 EC. The EGTC Regulation was introduced to address the difficulties encountered by Member States in the field of cross-border cooperation. It introduced a new cooperation instrument, an EGTC. An EGTC is made up of Member States, regional authorities, local authorities and/or bodies governed by public law in at least two Member States. An EGTC may be entrusted with implementing programmes co-financed by the Community or any other cross-border cooperation project with or without Community funding. The Regulation was amended in 2013.[91] According to the Preamble 'Experience with EGTCs established so far shows that, as a legal instrument, EGTCs are also being used for cooperation in the context of Union policies other than Cohesion

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[87] The Amsterdam Treaty 1997 provided new powers in this respect. The text provided 'The provisions of this Treaty shall apply to the French overseas departments, the Azores, Madeira and the Canary Islands.

However, taking account of the structural social and economic situation of the French overseas departments, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the present Treaty to those regions, including common policies.

The Council shall, when adopting the relevant measures referred to in the second subparagraph, take into account areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Community programmes.

The Council shall adopt the measures referred to in the second subparagraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order, including the internal market and common policies.`

[88] Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund (OJ [2006] L210/12)

[89] Regulation No 1828/2006 of the European Commission (OJ [2006] L371/1).

[90] Regulation (EC) No 1082/2006 of the European Parliament and of the Council of 5 July 2006 on a European grouping of territorial cooperation (EGTC) (OJ [2006] L210/19).

[91] Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJ [2013] L347/303).

Policy, including by implementing programmes or parts of programmes with Union financial support other than that under Cohesion Policy. The efficiency and effectiveness of EGTCs should be enhanced by broadening the nature of EGTCs, removing persistent barriers and facilitating the establishment and operation of EGTCs while maintaining the Member States' ability to limit the actions that EGTCs are able to carry out without Union financial support..

Objectives	Aim	Funds	Funding	Other comments
Convergence	To help the least-developed Member States and regions catch up more quickly with the EU average by improving conditions for growth and employment. It covers the Member States and regions whose development is lagging behind. The fields of action will be physical and human capital, innovation, knowledge-based society, adaptability to change, the environment and administrative effectiveness.	ERDF, ESF, Cohesion fund	EUR 251.163 billion, equivalent to 81.54 % of the total	This objective is close to the original Objective 1
Regional competitiveness and employment	to strengthen the competitiveness, employment and attractiveness of regions other than those which are the most disadvantaged. It must help to anticipate economic and social changes, promote innovation, entrepreneurship, protection of the environment, accessibility, adaptability and the development of inclusive labour markets.	ERDF; ESF (funding to tie in with the EES)	EUR 49.13 billion, equivalent to 15.95 % of the total and divided equally between the ERDF and the ESF	The eligible regions are: (i) regions which fell under Objective 1 during the period 2000-06, which no longer meet the regional eligibility criteria of the Convergence objective, and which consequently benefit from transitional support.; (ii) all other EU regions not covered by the Convergence objective
European Territorial Cooperation (ETC)	aims to strengthen cross-border, transnational and inter-regional cooperation. It aims	ERDF	EUR 7.75 billion, equivalent to 2.52 % of the total	ETC is based on the old European INTERREG initiative. There were 13 transnational programmes and X cross-border, The

	to promote common solutions for neighbouring authorities in the fields of urban, rural and coastal development, the development of economic relations and the creation of networks of small and medium-sized enterprises (SMEs). Cooperation will be based around research, development, information society, the environment, risk prevention and integrated water management			entire EU territory is eligible to participate in networks of cooperation and exchange of experience.

Table 5: 2006 reforms
Source: http://europa.eu/legislation_summaries/agriculture/general_framework/g24231_en.htm

1.77 In respect of the administration of the programmes, a major simplification occurred: the introduction of two programming steps instead of three. Based on ‘Community guidelines on cohesion’, planning was to take place at a national level through the national strategic reference frameworks, while implementation was left to the operational programmes. The regulations and Guidelines required that the new generation of programmes should earmark a certain proportion of the resources for the key investments linked to the renewed strategy for growth and jobs (the so-called ‘Lisbon earmarking’ instrument.[92]

1.78 In addition, four new policy instruments, **Jaspers, Jeremie, Jasmine [DN: need to check when Jasmine was introduced – BIS will add footnote explaining what there four are] and Jessica**, were introduced, intended to improve cooperation between the Commission and the EIB and other financial institutions in order to strengthen capacity-building.[93] Community initiatives were, however, discontinued.

[92] http://ec.europa.eu/regional_policy/sources/docgener/panorama/pdf/mag26/mag26_en.pdf, 24.
[93] Ibid.

1.79 Finally, the **Instrument for Pre-accession Assistance (IPA)** replaced the previous pre-accession instruments in 2007. IPA was designed to help candidate countries and potential candidate countries of the Western Balkans to prepare for enlargement.[94]

1.80 Separate from these reforms, but consistent with them, was the creation of the **European Globalisation Adjustment Fund (EGAF)**,[95] based on Article 159 EC. It was intended to complement the work of the ESF. As the Commission explains, while the ESF takes a strategic, long-term perspective in anticipating and managing the social impact of industrial change through activities such as life-long learning, the EGAF provides workers with one-off individual support limited in time.

1.81 The original 2006 Regulation was repealed and replaced by Regulation 1309/2013,[96] based on Article 175 TFEU. Its scope was broadened to include the self-employed as well as broadening the circumstances in which it can be applied

1.82 The EGAF has a maximum annual budget of EUR 150 million for the period 2014-2020. It can fund up to 60% of the cost of projects designed to help workers made redundant find another job or set up their own business. As a general rule, the EGF can be used only where over 500 workers are made redundant by a single company (including its suppliers and downstream producers), or if a large number of workers are made redundant in a particular sector in one or more neighbouring regions. EGF cases are managed and implemented by national or regional authorities. Each project runs for 2 years.[97]

The Lisbon Treaty 2009

1.83 The Lisbon Treaty, while constitutionally significant (for example, giving legal effect to the Charter of Fundamental Rights, restructuring the Treaties so that the more constitutional elements can be found in the TEU, the more normative parts in the TFEU, and the consequent renumbering of the texts), did not make fundamental changes in the areas of cohesion policy, except that cohesion policy, like a number of other areas, was subject to the general extension of the co-decision procedure, now called the ordinary legislative procedure (see table

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94 Ibid.
95 Regulation of the Council and the European Parliament 1927/2006 (OJ [2006] L406/1), as amended.
96 OJ [2013] L347/855.
97 This information is taken from http://ec.europa.eu/social/main.jsp?catId=326&.

7).

1.84 The Lisbon Treaty did, however, introduce the notion of ‘territorial cohesion’, alongside economic and social cohesion, into the heading of the Treaty’s Title on cohesion and into the statement of aims in Article 174 TFEU. The need to assist the regions is further spelled out in a new paragraph added to Article 174 TFEU which provides: ‘Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.’

EU2020

1.85 The year after the Lisbon Treaty came into force, came the launch of **Europe 2020,** the EU’s ten-year growth strategy for 2011-2020, replacing the Lisbon Strategy whose targets had not been met, in part due to the effects of the financial crisis. According to the Commission,[98] EU2020 is ‘about addressing the shortcomings of our growth model and creating the conditions for a different type of growth that is **smarter, more sustainable and more inclusive**’. EU2020 sets five key targets covering employment; education; research and innovation; social inclusion and poverty reduction; and climate/energy and includes seven flagship initiatives providing a framework through which the EU and national authorities mutually reinforce their efforts in areas supporting the Europe 2020 priorities such as innovation, the digital economy, employment, youth, industrial policy, poverty, and resource efficiency. Unlike the Lisbon Strategy, the role of the structural funds is more prominent in EU2020:[99] they feature as a means of delivering the flagship initiatives. The Strategy document says, ‘Economic, social and territorial cohesion will remain at the heart of the Europe 2020 strategy to ensure that all energies and capacities are mobilised and focused on the pursuit of the strategy's priorities. Cohesion policy and its structural funds, while important in their own right, are key delivery mechanisms to achieve the priorities of smart, sustainable and inclusive growth in Member States and regions.’[100]

1.86 The delivery of Europe 2020 relies heavily on the new governance structures and processes that the EU has been putting in place since 2010.[101] At the heart of these is the **European Semester**, a yearly cycle of economic policy

[98] http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index_en.htm.
[99] See also the specific website: http://ec.europa.eu/regional_policy/what/europe2020/index_en.cfm
[100] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:2020:FIN:EN:PDF, 21.
[101] http://ec.europa.eu/europe2020/europe-2020-in-a-nutshell/index_en.htm

coordination involving EU level policy guidance by the European Commission and Council, reform commitments by the Member States and country-specific recommendations prepared by the Commission and endorsed at the highest level by national leaders in the European Council (see fig.1)

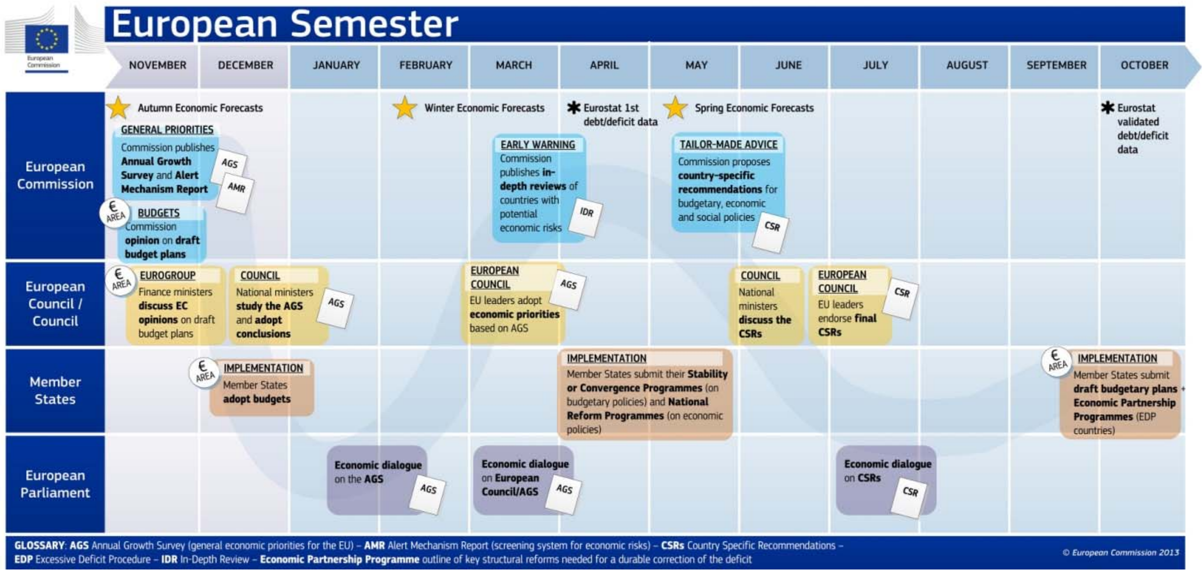

Fig 1 The European Semester
Source: http://ec.europa.eu/europe2020/making-it-happen/index_en.htm

European Structural and Investment Funds 2014-2020

1.87 The link between the structural funds and delivery of the EU2020 agenda has been carried through to the EU's Cohesion Policy 2014-2020. The Commission succinctly summarises the 2014-2020 policy as follows:[102] 'Overall, the reformed cohesion policy will make available up to EUR 366.8 billion to invest in Europe's regions, cities and the real economy. It will be the EU's principle investment tool for delivering the Europe 2020 goals: creating growth and jobs, tackling climate change and energy dependence, and reducing poverty and social exclusion. This will be helped through targeting the European Regional Development Fund at key priorities such as support for small and medium-sized enterprises where the objective is to double support from EUR 70 to 140 billion over the 7 years. There will be stronger result-orientation and a new performance reserve in all European Structural and Investment Funds that incentivises good projects. Finally, efficiency in cohesion policy, rural development and the fisheries fund will also be linked to economic governance to encourage compliance of Member States with the EU's recommendations under the European Semester.'

[102] http://ec.europa.eu/regional_policy/what/future/index_en.cfm.

1.88 The Cohesion Policy package contains a Common Provisions Regulation (CPR) 1303/2013,[103] adopted under Article 177 TFEU, together with the specific Regulations for the different funds: ERDF[104] (based on Articles 178 and 349 TFEU), ESF[105] (based on Article 164 TFEU), ETC[106] (based on Article 178 TFEU), EGTC,[107] (based on Article 175 TFEU), Cohesion Fund[108] (based on Article 177 TFEU), EAFRD[109] (based on Articles 42 and 43(2) TFEU). These, together with the European Maritime and Fisheries Fund[110] are now referred to as the European Structural Investment Funds (ESI).

1.89 The Common Provisions Regulation is a complex, sophisticated instrument running to over 150 pages (three times the length of, say, the 2006 General Regulation). The outline that follows will focus on the main changes only.

1.90 First, there are now eleven **thematic objectives** that provide a common framework for all five ESI funds (see table 6)

Table 6 Thematic objective 2014-2020

(1) strengthening research, technological development and innovation;
(2) enhancing access to, and use and quality of, ICT;

[103] Regulation (EU) No 1303/2013 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 and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ [2013] L347/320.

[104] Regulation (EC) No 1301/2013 of the European Parliament and of the Council on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ [2013] L347/289).

[105] Regulation (EC) No 1304/2013 of the European Parliament and of the Council on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ [2013] L347/470).

[106] Regulation (EU) No 1299/2013 of the European Parliament and of the Council on specific provisions for the support from the European Regional Development Fund to the European territorial cooperation goal (OJ [2013] L347/259).

[107] Regulation (EU) No 1302/2013 of the European Parliament and of the Council of 17 December 2013 amending Regulation (EC) No 1082/2006 on a European grouping of territorial cooperation (EGTC) as regards the clarification, simplification and improvement of the establishment and functioning of such groupings (OJ [2013] L347/303).

[108] Council Regulation (EC) No 1300/2013 on the Cohesion Fund and repealing Council Regulation (EC) No 1084/2006 (OJ [2013] L347/281).

[109] Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ [2013] L347/487).

[110] Regulation (EU) No 508/2014 of the European Parliament and of the Council on the European Maritime and Fisheries Fund and Repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006 and EC (No) 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council

(3) enhancing the competitiveness of SMEs, of the agricultural sector (for the EAFRD) and of the fishery and aquaculture sector (for the EMFF);

(4) supporting the shift towards a low-carbon economy in all sectors;

(5) promoting climate change adaptation, risk prevention and management;

(6) preserving and protecting the environment and promoting resource efficiency;

(7) promoting sustainable transport and removing bottlenecks in key network infrastructures;

(8) promoting sustainable and quality employment and supporting labour mobility;

(9) promoting social inclusion, combating poverty and any discrimination;

(10) investing in education, training and vocational training for skills and lifelong learning;

(11) enhancing institutional capacity of public authorities and stakeholders and efficient public administration.

1.91 Second, a new category of **transition regions** is created which lies between the less developed regions (with a gross domestic product (GDP) per capita of less than 75% of the EU average) and the more developed regions (with a GDP per capita above 90% of the EU average) (Article 90(2) CPR). Within the so-called **thematic concentration** minimum allocation shares are fixed for a number of priority thematic objectives for the three types of regions. For example, in developed and transition regions at least 80% of the ERDF resources have to be allocated to the shift towards a low-carbon economy (energy efficiency and renewables), research and innovation, the improvement of competitiveness of small and medium-sized enterprises or access to information and communication technologies. This amount will be 60% in transition regions and 50% in less developed regions, reflecting their broader development needs.[111]

1.92 Third, the Regulation lays down **general principles** for the operation of the ESI funds, some of which are familiar (eg multi-annual programming, complementarity) but others are much more explicit about the link with the EU's economic governance programme and the EU2020 strategy. Notably, Article 4(1) provides: 'The ESI Funds shall provide support, through multi-annual programmes, which complements national, regional and local intervention, to deliver the Union strategy for smart, sustainable and inclusive growth, as well as the Fund-specific missions pursuant to their Treaty-based objectives, including economic, social and territorial cohesion taking account of the relevant Europe 2020 Integrated Guidelines and the relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU, and of the relevant Council recommendations adopted in accordance with Article 148(4)

[111] This is taken from http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140106.pdf

TFEU and where appropriate at national level, the National Reform Programme.'

1.93 Further, the general principles make express the link between **partnership and multi-level governance**. The partnership is to include: competent urban and other public authorities; economic and social partners; and relevant bodies representing civil society, including environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, gender equality and non-discrimination (Article 5 CPR). Article 5 continues: 'In accordance with the multi-level governance approach, the partners referred to in paragraph 1 shall be involved by Member States in the preparation of Partnership Agreements [see below] and progress reports and throughout the preparation and implementation of programmes, including through participation in the monitoring committees for programmes in accordance with Article 48.' The Regulation empowers the Commission to bring forward a delegated act for a code of conduct on partnership that would set out the main principles and good practices.

1.94 The general principles also make express reference to the horizontal provisions of the Treaty, notably on equality between men and women and sustainable development (Articles 7 and 8 CPR).

1.95 Fourth, in order to improve strategy, the Regulation establishes a **common strategic framework (CSF)**, replacing the separate sets of guidelines for each fund which existed under the 2007-13 policy. The CSF establishes strategic guiding principles to facilitate the programming process and the sectoral and territorial coordination of Union intervention under the ESI Funds, and with other relevant Union policies and instruments, in line with the targets and EU2020 objectives. (Articles 10-13 CPR).

1.96 In the light of the CSF, Member States conclude **partnership agreements**, drawn up in cooperation with the Article 5 CPR partners, with the Commission, setting out the commitments for the use of funds at national and regional level. In particular the partnership agreements must contain an analysis of disparities, development needs and growth potential with reference to the thematic objectives and the territorial challenges, and taking account of the National Reform Programme, where appropriate, and relevant country-specific recommendations adopted in accordance with Article 121(2) TFEU and relevant Council recommendations adopted in accordance with Article 148(4) TFEU. On the basis of the partnership agreements programmes are established through which the cohesion policy is translated into concrete priorities and actions. (Articles 14-15 CPR).

1.97 Fifth, the Regulation provides for **macro-economic conditionality** to ensure that the effectiveness of the ESIs is not undermined by unsound macro-economic policies. In other words, the CPR seeks to ensure that the Member State commitment to expenditure does not undermine their ability to fulfil the Maastricht criteria. The structure envisaged for the macro-economic conditionality has parallels with the Stability and Growth Pact. As the Council explains,[112] under the **preventive** arm of the macro-economic conditionality the Commission may request amendments to a member state's partnership agreement in order to address for instance macroeconomic imbalances (Articles 16, 23). Where a Member State fails to respond satisfactorily to such a request, the Commission may propose that the Council suspend a part or all of the payments for the programmes concerned. The proposed suggestion requires the support of a qualified majority of the Council to take effect. Under the **corrective** arm, the Commission must propose suspending part or all of the commitments or payments when a Member State fails to take corrective action within the economic governance procedures (e.g. the excessive deficit procedure and the macroeconomic imbalances procedure). A proposal to suspend commitments is deemed adopted unless it is rejected by the Council with qualified majority. A proposal to suspend payments requires the support of a qualified majority of the Council (Article 16 CPR).The CPR makes clear that sanctions cannot be applied to the UK as a result of these procedures.

1.98 Sixth, **ex-ante conditionality** is set up, introducing a number of framework conditions which must be in place "ex-ante", before the funds are disbursed to ensure that investments can be made in the most effective manner and that the selected thematic objectives and investment priorities are properly implemented.

1.99 Seventh, as an incentive, a **performance reserve** amounting generally to 6% of the national allocation under the five European structural and investment funds is set aside and released when pre-defined targets are met.

1.100 At a more constitutional level, there are two further aspects of the CPR which should be noted: comitology and subsidiarity/proportionality. In respect of **comitology**, the provisions in Articles 290 and 291 TFEU on delegated and implementing acts respectively, now apply. It is estimated that the regulation makes provision for 60 different possibilities for the Commission to make subordinate legislation.[113] In respect of **subsidiarity and proportionality**, these principles make a more obvious appearance. For example, Article 10(3) CPR provides 'The CSF shall facilitate the preparation of the Partnership

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[112] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140106.pdf.
[113] W. Petzold, 'Conditionality, Flexibility, Unanimity: The Embedded 2013 Reform of EU Coheison Policy' (2013) EStIF 7, 11.

Agreement and programmes in accordance with the principles of proportionality and subsidiarity and taking into account national and regional competences, in order for the specific and appropriate policy and coordination measures to be decided.

1.101 So far we have been looking at the ESI under the 2014-2020 perspective. There is one other measure which should be addressed as a cohesion measure albeit that it is not an ESI, namely the Regulation on the Fund for the most deprived (FEAD), based on Article 175(3) TFEU,[114] replacing and expanding on the current EU food aid programme, which has been running since 1987. ,mmThe FEAD's financial resources of almost 3.5 billion euros will be distributed to Member States for seven years (2014-2020). The Member States can choose whether to distribute food and/or other material assistance to the most deprived persons, or to address them by other means such as social inclusion activities. As a new element, the member states may also use some of the funding to facilitate food donations from private sources e.g. from supermarkets.[115] The Commission sees this Regulation as complementing the work of the ESF: 'The proposed Fund would help people to break out of the vicious circle of poverty and deprivation by offering temporary remedial actions, i.e. meeting people's very basic needs so that they are in a position to get a job or follow a training course or counselling such as those supported by the European Social Fund. If people have insufficient food or clothing or lack other essential goods, they are not in a position to follow training courses or counselling.'[116] The FEAD Regulation has raised some important issues on competence and subsidiarity, questions which will be returned to in section B.

1.102 Also within the context of 2014-2020 financial perspective is the **Connecting Europe Facility** (CEF), the future **fu**nding instrument for the trans-European networks (TENS) in the fields of transport, energy and telecommunications. The Regulation establishing the CEF, adopted under Article 172 TFEU, determines the conditions, methods and procedures for the Union's financial contribution to TEN projects. It replaces the existing legal bases for TEN funding. As the Council explains, the CEF's overarching objective is to help create high-performing and environmentally sustainable interconnected networks across Europe, thereby contributing to economic growth and social and territorial cohesion within the Union'.[117] The overall CEF budget for 2014-2020 is EUR 33.2 billion.

[114] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/141419.pdf.
[115] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/140047.pdf, 11 Dec 2013
[116] http://europa.eu/rapid/press-release_MEMO-12-800_en.htm.
[117] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/trans/139932.pdf

Conclusions

1.103 This chapter has charted the evolution of the EU's Cohesion policy. It tells a story of growing EU competence and growing budgets. What remains highly contested is the effectiveness of the policy. As two commentators put it, one an employee of the EIB (although writing in a personal capacity), 'One of the biggest problems for defenders of Cohesion policy is the difficulty in providing a credible economic case for the policy, based on conclusive evidence of effective results. After more than thirty years of intervention, the contribution of Cohesion policy to economic development and growth remains contested and uncertain. A wide range of results are reported in a vast literature on the subject, ranging, at best, from positive correlations between Structural Funds intervention and growth to, at worst, negative impacts.'[118] The Commission strongly contests such claims and makes a strong case for the effectiveness of EU intervention. However, it is possible to say that in the last fifty years, cohesion policy has undergone more radical change than perhaps any other policy area apart from EMU. It now enjoys a firm legal basis in the Treaties and, following the reforms of 1999, 2006 and 2013, it is firmly rooted in the EU's general strategy; it is integral rather than a bolt-on extra.

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[118] G. Manzella and C Mendez, 'The turning points of EU Cohesion policy' http://www.eukn.org/E_library/Urban_Policy/The_turning_points_of_EU_Cohesion_policy. For a summary of the literature, see S. Becker, 'EU Structural Funds: Do They Generate More Growth?', http://www.chathamhouse.org/sites/default/files/public/Research/International%20Economics/1212bp_becker.pdf and P. Swidlicki and R. Ruparel, 'Off target: the case for brining regional policy back home', Open Europe, Jan 2012, http://www.openeurope.org.uk/Content/Documents/Pdfs/2012EUstructuralfunds.pdf, Annex I.

Section B: Current State of Competence

Introduction

2.1 Chapter 1 traced the development of Cohesion Policy in the EU from 1957 to 2014. Not only did it look at the seven different periods of cohesion policy in the EU but it also examined the main Treaty changes which have had an effect on the area of cohesion policy. The chapter outlined all the powers given to the EU, as well as the Treaty provisions providing the legal bases for the EU to act. The resulting picture is complex, and the difficulty in understanding is exacerbated by the two occasions on which the Treaties were renumbered.

2.2 To pull this material together, Table 7 summarises all of the relevant provisions of the Treaties. It shows which Treaty introduced the measures (eg Treaty of Rome, Single European Act, Maastricht Treaty), how the measures have been amended by the subsequent treaties, and also how the Treaty numbers have been changed.[119] Finally, in respect of those treaty provisions which provide a legal basis, it gives examples of measures which have been adopted under this basis. The text of the current provisions of the TFEU relevant to cohesion policy is found in Annex I.

Subject matter	Treaty of Rome 1957	Single European Act 1986	Treaty of Maastricht 1992	Amsterdam renumbering 1997 and substantive changes	Lisbon renumb-ering 2009	Examples of legislation adopted (where appropriate)
Agriculture						
General policy	Art. 38 EEC			Art. 32 EC	Art. 38 TFEU The Treaty has been amended to make clear that it applies to fisheries as well as	

[119] For reasons of space, the changes made by the Treaty of Nice are put in footnotes.

					agriculture	
Provision for Council to grant aid	Art. 42 EEC (powers as for Art. 43 EEC)			Art. 36 EC	Art. 42 TFEU	
Powers to develop CAP	Art. 43 EEC Council acts by unanimity during the first two stages and after consulting EP, qualified majority thereafter			Art. 37 EC Council acts only by qmv.	Art. 43 TFEU EP and Council now act by the ordinary legislative procedure	The original EAGF Regulation 25/1962
European Social Fund						
Establish-ment of fund and uses	Art. 123 EEC		Amended in the light of extensive revision of the ESF Treaty provisions	Art. 146 EC	Art. 162 TFEU	
Respon-sibility for the admin. of the fund	Art. 124 EEC			Art. 147 EC	Art. 163 TFEU	
Uses of the fund	Art. 125 EEC		Became the legal basis for implement-ing decisions under the ESF: cooperation procedure under Art. 189c	Art. 148 EC cooperation procedure replaced by co-decision procedure	Art. 164 TFEU Implemen-ting regulations now subject to ordinary legislative procedure.	
Powers for the Council on the use	Art. 126 EEC -Council		Deleted			3

of the fund	acting by qmv after consulting EP can rule that all or some of the assistance granted under Art. 125 shall no longer be granted -Council acting by unanimity can determine what new tasks may be entrusted to the fund					
Powers concerning implement ing provisions	Art. 127 EEC -Council acting by qmv after consulting the EP		Deleted			
EIB						
EIB establish-ment	Art. 129 EEC		Art. 198d	Art. 266 EC	Art. 308 TFEU Council's powers to amend the statute of the Bank set out in text of Art. 308 (acting unanim-ously in accordance with the special legislative	

				procedure [120]).
EIB powers	Art. 130 EEC	Art. 198e	Art. 267 EC	Art. 309 TFEU
TENS				
Aims		Art. 129b	Art. 154 EC	Art. 170 TFEU
Tasks		Art. 129c	Art. 155 EC minor amendments and updating of text	Art. 171 TFEU
Powers		Art. 129d Council/EP to adopt guidelines under Art. 189b (co-decision) procedure; other measures to be adopted by Art. 189c cooperation procedure	Art. 156 EC cooperation procedure replaced by co-decision	Art. 172 TFEU Guidelines and other measures now adopted under the ordinary legislative procedure
Industry				
Aims and powers		Art. 130 Specific measures taken in support of MS action adopted by Council by unanimity after consulting EP	Art. 157 EC	Art. 173 TFEU The powers of the Commission extended to include a wider range of OMC methods. The EP has to be kept fully informed. Specific measures

[120] The Treaty of Nice had already provided for this.

					now to be adopted by the ordinary legislative procedure.[121] However, harmonisation is now expressly excluded.	
Economic and social cohesion					**Economic, social and territorial cohesion**	
Policy		Art. 130a EEC		Art. 158 EC minor amendment to include addition of 'islands' to 'least favoured regions or islands'	Art. 174 TFEU Greater emphasis placed on assisting regions.	
Role of MS and EU		Art. 130b EEC	Increased powers to act outside the frame of the structural funds; Council acts unanimously, consultation with EP	Art. 159 EC	Art. 175 TFEU Specific actions taken outside the funds by ordinary legislative procedure[122]	EU Solidarity Fund Reg 2012/2002 part adopted under this legal basis; EGAF Reg 1309/2012 adopted under this basis.
Role of ERDF		Art. 130c EEC		Art. 160 EC	Art. 176 TFEU	
Power to legislate for common provisions		Art. 130d EEC Council acts unanim-	Council acts unanimously, assent from	Art. 161 EC	Art. 177 TFEU Ordinary legislative procedure	First Coor-dination Reg.2052/88

[121] The co-decision procedure had already been specified by the Treaty of Nice.
[122] The co-decision procedure had already been prescribed by the Treaty of Nice.

in respect of the structural funds		ously, consults EP.	EP; same procedure applies for setting up new Cohesion Fund		applies in respect of structural funds and the cohesion fund[123]	
Implementing decisions (now regulations after Lisbon) concerning ERDF		Art. 130e EEC Council acts by qmv, coop-eration with EP	Article 189c cooperation procedure	Art. 162 EC Co-decision procedure applies	Art. 178 TFEU Ordinary legislative procedure applies	Regulation 4254/88
Committee of the Regions						
Establish-ment and number of members			Art. 198a	Art. 263 EC Amendments made by Treaties of Amsterdam and Nice	Art. 305 TFEU	
Internal procedure			Art. 198b	Art. 264 EC Some amendments	Art. 306 TFEU	
Involve-ment in decision making			Art. 198c	Art. 265 EC New paragraph added giving increased consultation	Art. 307 TFEU	
Other relevant legal bases						
Measures necessary to attain one of the objectives set out in	Art. 235 EEC			Art. 308 EC	Art. 352 TFEU Special procedure (Council acting	Used to adopt original ERDF Reg 724/75; ISPA Reg.

123 Treaty of Nice had provided 'From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Interinstitutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.'

the Treaty					unanimously, EP gives consent); subsidiarity procedure referred to; limits on harmonisation	1267/1999 and other pre-accession instruments; Part of the legal basis for the European Solidarity Fund Reg. 2012/2002.
Territorial application of the Treaties	Art. 227 EEC		Amendments introduced to give Council, acting by unanimity, to extend other Treaty provisions to French overseas territories. It adds account must be taken of the economic and social development of these areas.	Art.299 EC significant amendments to para 2 to give Council power, acting by qmv to adopt specific measures aimed, in particular, at laying down the conditions of application of the present Treaty to those regions. This included structural funds.	Arts. 349 TFEU Specific measures to be adopted by special legislative procedure	

Table 7 Table of relevant legal bases, the Treaty responsible for their adoption, the revised numbers, and, in respect of provisions conferring powers, a summary of what powers were conferred.

Legal base issues

2.3 In the early days of the EU the institutions had to resort to the general legal basis Article 235 EEC (Article 308 EC and now Article 352 TFEU, the conditions of which have been tightened) to adopt EU legislative measures in the field of cohesion policy in the absence of more specific legal bases. As chapter one has shown, the situation today is very different, with a significant range of legal bases at the disposal of the EU. Is there a role left for Article 352 TFEU? *EP v Council (International Fund for Ireland)*[124] suggests the

[124] Case C-166/07 [2009] ECR I-7135.

answer is yes.

2.4 As part of the Anglo-Irish agreement, the UK and Ireland agreed to set up the International Fund for Ireland (IFI), as an international organisation with separate legal personality. The fund can be used to facilitate economic and social advance and to encourage peace and reconciliation between the two communities in the North and South of Ireland. The EU was one of the donors to the fund and its contribution was made under Regulation 1968/2006[125] which was adopted under Article 308 EC (only consultation with the EP). The Parliament argued that this was the wrong legal basis; it should have been adopted under Article 159(3) EC (co-decision) (now Article 175 TFEU).

2.5 The Court found that because the regulation related to peace and reconciliation between the two communities in Northern Ireland, as well as to economic and social progress in the areas affected by the armed conflict, this corresponded to the objectives pursued by the EU's policy on economic and social cohesion.[126] The regulation therefore formed part of the specific actions which, when they prove to be necessary outside the structural funds in order to realise the objectives of Article 158 EC, could be adopted in accordance with Article 159(3) EC.[127]

2.6 However, because of the EU's limited ability to control the use of the IFI for matters within the fund's purposes but outside the realm of economic and social cohesion, the Court said the legislature was entitled to take the view that the range of activities financed by the regulation would extend beyond the scope of the EU's policy on economic and social cohesion.[128] Because the objectives of the fund fell within the EU's objectives more generally, Article 308 EC should have also been the legal basis.[129]

2.7 While there is still a role for the residual legal bases, like Article 352 TFEU, the Court generally prefers states to use a more specific legal basis. The legal basis which has proved particularly controversial – and the one at issue in *IFI*, is Article 175 TFEU. This provides:
Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the

[125] OJ [2006] L409/86.
[126] Paras. 53 and 54.
[127] Para. 58.
[128] Para. 63.
[129] Para. 69.

objectives set out in Article 174 and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

2.8 This is a complex provision which needs to be understood in its historical context. The first two paragraphs were found in the original Article 130b EEC introduced by the Single European Act 1986. The third paragraph was added at Maastricht. The first two paragraphs therefore represent the EU's more tentative forays into the field of economic and social cohesion when, as chapter one showed, Member States were still keen to keep pretty firm control on cohesion policy. The third paragraph was added in 1992 four years after the landmark reforms of the structural funds in 1988 and, with hindsight, perhaps at the heyday of the EU's confidence in its powers. However, this historic context does not provide a clear answer as to who can do what and when.

2.9 The first two paragraphs suggest that the Member States are primarily responsible for action in the field of strengthening the EU's economic, social and territorial cohesion. The EU's role is only to take into account the objectives laid down in Article 174 in respect of the EU's (other?) policies. This residual role for the EU is confirmed by the statement that 'The Union shall *also support* the achievement of these objectives by the action it takes through the Structural Funds.' However, Article 174 TFEU, to which Article 175 twice refers, makes reference only to the *Union* acting, not the Member States. So at best we can say that a combined reading of Article 174 and 175 TFEU is that the EU and the Member States should work in tandem.

2.10 Where does this leave Article 175(3) TFEU? The fact the paragraphs comes third does not, on its own, indicate that the paragraph is residual. As we have seen, this was a historical fact. However, the language of Article 175(3) TFEU might indicate that Article 175(3) is, in some way, residual and other more specific legal bases should be used : 'If specific actions prove necessary outside the Funds and *without prejudice to the measures decided upon within the framework of the other Union policies...'*. However, there is no hint in the Commission's practice that it sees Article 175(3) TFEU as residual in any way.

2.11 This issue became live with the adoption of the Regulation on the Fund for the most deprived (FEAD), based on Article 175(3) TFEU,[130] replacing and expanding the EU food aid programme, which had been running since 1987.[131] The original food aid programmes, the so-called most deprived persons programme (MDP), had their legal bases in the CAP provisions of the Treaty (Articles 42 and 43(2) TFEU).[132] As the Commission explained, [133] the original idea behind the MDP programme was that EU rules permitted releasing public intervention stocks of agricultural products[134] to Member States wishing to use them as food aid for the most deprived in the Community. To ensure continuity of supply, in the mid-1990s the MDP was modified to make it possible to supplement intervention stocks with market purchases. This was not intended as a long term solution but one that could be called upon when there were insufficient supplies of certain products.

2.12 However, successive reforms of the CAP led to a much more market-oriented system, resulting in far lower intervention stocks. Recognising that this could become a problem for the MDP scheme, the Commission published a proposal in 2008 that included measures to make it easier to access products from the open market. A further, revised proposal followed in September 2010. However, both proposals became deadlocked in the Council, with opposition from 6 Member States. The European Commission then tabled a second amended proposal which added a second legal basis, namely social cohesion, reflecting the scheme's important social dimension.[135] Meanwhile, the General Court annulled the provisions of the 2009 distribution plan providing for purchases on the market because the main objective of the plan was not the disposal of intervention sticks but covering the Member State

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[130] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/141419.pdf.
[131] Reg. 3730/87 (OJ [1987] L352/1).
[132] See eg Reg 121/2012 amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007 as regards distribution of food products to the most deprived persons in the Union (OJ [2012] L44/1).
[133] http://ec.europa.eu/agriculture/most-deprived-persons/index_en.htm.
[134] Intervention stocks are created from surplus stocks of agricultural produce that the Council of Ministers has decided to remove from the market, through a policy of supply control.
[135] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0634:FIN:en:PDF.

requirements.[136] This meant that the Commission had to source the 2012 distribution plan entirely from existing intervention stocks, with the result that the budget of the 2012 plan accounted for only € 113 million, less than a quarter of the previous annual plans.

2.13 There followed intense political debate over the Commission's amended proposal but eventually the measure was adopted for 2012 and 2013 but again based solely on the CAP provisions.[137]

2.14 The new Regulation establishing a Fund for European Aid to the Most Deprived was proposed by the Commission solely under Article 175(3) TFEU.[138] The Commission justified this change of basis on the grounds that the original MDP programme had lost its rationale and that 'The envisaged programme would contribute to the social cohesion objective of the Union.' The new fund not only gives Member States more flexibility in terms of procuring food to be distributed, so that the money will go further, but also can be used for clothing and other essential goods (such as shoes, soap and shampoo) for distribution to the most vulnerable.

2.15 However, all has not been plain sailing. The House of Commons issued a reasoned opinion that the Regulation did not comply with the principle of subsidiarity,[139] as did the House of Lords European Scrutiny Committee (it had already raised concerns about the earlier Commission proposals under the MDP).[140] The House of Lords Committee said:

10. The Commission has provided little by way of justification for the compliance of its proposal with the principle of subsidiarity. This important principle is not specifically addressed in its Explanatory Memorandum and recital (42) of the proposal, addressing this point, is merely formulaic. Some indication of the Commission's justification can be derived from its Impact assessment, which includes, at section 2.7, a section on "EU added-value". Here the Commission identifies poverty and social exclusion as major obstacles to the achievement of the Europe 2020 objectives. It also identifies the provision of food and other temporary assistance as benefitting the dignity and social capital of the most deprived persons. However, the only direct justification for EU action is "the level and nature of poverty and social

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[136] Case T-576/08 *Germany v Council* [2011] ECR II-1578, para. 128.
[137] Reg 121/2012 amending Council Regulations (EC) No 1290/2005 and (EC) No 1234/2007 as regards distribution of food products to the most deprived persons in the Union (OJ [2012] L44/1).
[138] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0617:REV1:EN:PDF.
[139] http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/scrutiny-reserve-overrides/.
[140] http://www.publications.parliament.uk/pa/ld201213/ldselect/ldeucom/87/87.pdf.

exclusion in the Union, further aggravated by the economic crisis, and uncertainty about the ability of all member States to sustain social expenditure and investment at levels sufficient to ensure that social cohesion does not deteriorate further and that the objectives and targets of the Europe 2020 strategy are achieved."

11. We believe that such uncertainty can be met by action through the existing EU cohesion programmes (from which money would have to be diverted to fund this scheme), without burdening Member States and the bodies who are intended to implement the distribution programmes with the extra administrative obligations introduced by this proposal.

12. In our view, no convincing argument has been put forward by the Commission that the proposal meets the principle of subsidiarity.

2.16 Despite the concerns expressed by the Houses of Parliament - concerns shared by the Danish and Swedish parliaments as well as by the German Bundestag which also issued reasoned opinions - the threshold required to trigger a formal review of the proposal under Protocol (No,2) on the application of the principles of subsidiarity and proportionality was not met. As we have seen the measure was adopted as Regulation No 223/2014 of the European Parliament and of the Council on the Fund for European Aid to the Most Deprived.

Conclusions

2.17 As this section has shown, competence, and its close cousin subsidiarity, are taken seriously by the institutions, by the Member states and by the Court of Justice. However, given the sensitive nature of the matters at stake and their broad scope, it is often not easy to establish whether the EU clearly does have competence and if so under which legal basis. Fair minded people can legitimately take different views.

Annex I Full TFEU text of the relevant Treaty provisions

AGRICULTURE AND FISHERIES

Article 38

(ex Article 32 EC)

1. The Union shall define and implement a common agriculture and fisheries policy.

The internal market shall extend to agriculture, fisheries and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term 'agricultural', shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

2. Save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products.

3. The products subject to the provisions of Articles 39 to 44 are listed in Annex I.

4. The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 39

(ex Article 33 EC)

1. The objectives of the common agricultural policy shall be:

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

(b) the need to effect the appropriate adjustments by degrees;

(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article 40

(ex Article 34 EC)

1. In order to attain the objectives set out in Article 39, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

(a) common rules on competition;

(b) compulsory coordination of the various national market organisations;

(c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 39, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article 41

(ex Article 35 EC)

To enable the objectives set out in Article 39 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

(a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;

(b) joint measures to promote consumption of certain products.

Article 42

(ex Article 36 EC)

The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.

The Council, on a proposal from the Commission, may authorise the granting of aid:

(a) for the protection of enterprises handicapped by structural or natural conditions;

(b) within the framework of economic development programmes.

Article 43

(ex Article 37 EC)

1. The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 40(1), and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall

establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.

3. The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

4. In accordance with paragraph 2, the national market organisations may be replaced by the common organisation provided for in Article 40(1) if:

(a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;

(b) such an organisation ensures conditions for trade within the Union similar to those existing in a national market.

5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

Article 44

(ex Article 38 EC)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

THE EUROPEAN SOCIAL FUND

Article 162

(ex Article 146 EC)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article 163

(ex Article 147 EC)

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

Article 164

(ex Article 148 EC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing regulations relating to the European Social Fund.

TRANS-EUROPEAN NETWORKS

Article 170

(ex Article 154 EC)

1. To help achieve the objectives referred to in Articles 26 and 174 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

Article 171

(ex Article 155 EC)

1. In order to achieve the objectives referred to in Article 170, the Union:

— shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,

— shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,

— may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund set up pursuant to Article 177, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 170. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Union may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 172

(ex Article 156 EC)

The guidelines and other measures referred to in Article 171(1) shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

INDUSTRY

Article 173

(ex Article 157 EC)

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

— speeding up the adjustment of industry to structural changes,

— encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings,

— encouraging an environment favourable to cooperation between undertakings,

— fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Treaties. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

This Title shall not provide a basis for the introduction by the Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article 174

(ex Article 158 EC)

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross- border and mountain regions.

Article 175

(ex Article 159 EC)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 174 and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 176

(ex Article 160 EC)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 177

(ex Article 161 EC)

Without prejudice to Article 178, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments shall also be defined by the same procedure.

A Cohesion Fund set up in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

Article 178

(ex Article 162 EC)

Implementing regulations relating to the European Regional Development Fund shall be taken by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 43 and 164 respectively shall continue to apply.

THE COMMITTEE OF THE REGIONS

Article 305

(ex Article 263, second, third and fourth paragraphs, EC)

The number of members of the Committee of the Regions shall not exceed 350.

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in Article 300(3) on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

Article 306

(ex Article 264 EC)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two and a half years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the European Parliament, the Council or of the Commission. It may also meet on its own initiative.

Article 307

(ex Article 265 EC)

The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where the Treaties so provide and in all other cases, in particular those which concern cross-border cooperation, in which one of these institutions considers it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to Article 304, the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

THE EUROPEAN INVESTMENT BANK

Article 308

(ex Article 266 EC)

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to the Treaties. The Council acting unanimously in accordance with a special legislative procedure, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank, may amend the Statute of the Bank.

Article 309

(ex Article 267 EC)

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. For this purpose the Bank shall, operating on a non-profit- making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

(a) projects for developing less-developed regions;

(b) projects for modernising or converting undertakings or for developing fresh activities called for by the establishment or functioning of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;

(c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union Financial Instruments.

GENERAL PROVISIONS

Article 349

(ex Article 299(2), second, third and fourth subparagraphs, EC)

Taking account of the structural social and economic situation of Guadeloupe, French Guiana, Martinique, Réunion, Saint-Barthélemy, Saint-Martin, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.