

**Reply of the European Commission
to the Contribution of the XLVI COSAC
Warsaw, 02 – 04 October 2011**

Multiannual Financial Framework

The Commission thanks the COSAC for its constructive comments on the European Commission's Communication on the Budget Review and its proposals for the next Multiannual Financial Framework ('MFF') adopted on 29 June 2011. Input from national parliaments was a key element in the preparatory process. The above-mentioned proposals, including the proposal on own resources, have been designed to support our collective ambitions and to help Europe to respond to current challenges, while also reflecting the economic situation and fiscal pressures on Member States. The Commission agrees with the COSAC on the need to ensure that the results of the discussion take into account national budget frameworks and national budget strategies.

The Commission notes the agreement of COSAC on the fact that the proposals respond to the need to simplify and increase the transparency of the rules and procedures related to the allocation of EU funds and the implementation of the EU budget. Indeed, simplification is one of the driving principles of the Commission proposals for the new Multiannual Financial Framework. The Commission proposals are designed to make the best possible use of EU funding in areas where the EU budget can bring real added-value during the current economic crisis and beyond, as well as to better align the objectives of the programmes to the policy priorities of the Europe 2020 strategy. It is the Commission's objective to improve at the same time the performance of the programmes and the accountability and transparency in the spending of EU funds.

The Commission would also recall the Conference on the MFF held last October in Brussels, during which representatives of national parliaments, of the European Parliament, the Council and the Commission had the opportunity to hold a useful and frank exchange of views. Such a conference shall be repeated during the first semester of 2012 at the initiative of the Danish Presidency of the Council.

In this context, the Commission would like to highlight that its proposal on the new Financial Regulation aims at establishing a single accountability chain between the Commission and the Member States under shared management and at increasing responsibility and ownership of the Member States' bodies managing EU funds, notably by the introduction of the management declaration of assurance.

Own resources

As to the financing of the EU budget, the Commission proposes the creation of two new own resources in parallel with the stabilisation of the EU budget in real terms. The progressive introduction of new resources will allow for other national contributions to the EU budget to be reduced accordingly (GNI-based own resource) or eliminated (the current VAT-based own resource). As a result, Member States' overall contributions to the EU budget would diminish.

Regarding the new own resource based on the financial transactions tax (FTT), one of the objectives of the Commission proposal is to reduce the current distortions to the internal market resulting from the co-existence of comparable but uncoordinated approaches to the taxation of financial transactions in several Member States. This initiative also complements the regulatory framework aiming at improving financial market efficiency

and limiting the speculative behaviour that contributed to the financial crisis. By proposing a financial transaction tax at EU level the Commission is also following up on its advocacy for such a tax at global level in the framework of, inter alia, the G20.

The Commission is, however, mindful of the concerns expressed by COSAC in relation to the introduction of this new own resource but considers that these concerns are adequately addressed by the proposal. For instance, the Commission would like to highlight that transactions in which private households or SMEs are involved are outside of the scope of the FTT. Thus, house mortgages, bank borrowing by SMEs, consumer credits, contributions to insurance, spot currency exchange transactions and the raising of capital by enterprises will not be taxed. The scheme proposed aims at the 85% share of financial transactions that take place between financial institutions. In addition to ensuring the proper functioning of the internal market, the objective is to ensure that financial institutions make a fair and substantial contribution to covering the costs of the financial and economic crisis. As regards the risk of distortion of the level playing field between EU entities and their global competitors, the proposal provides for various mitigating measures such as very low tax rates, a broad tax base, appropriate criteria to determine the territorial application of the tax (to tax at the place of establishment of the financial institution, including financial institutions not established in the EU but acting with parties established in the EU) and harmonised scope.

Cohesion Policy and Common Agricultural Policy

Regarding the COSAC comments on agriculture and cohesion, the Commission hopes that its recently published proposals in these areas have already answered some of the questions raised in the Contribution.

As outlined in the Commission proposals, European cohesion policy must continue to remain a strong and inclusive policy, which covers all the European regions. Cohesion policy must be able to help regions to mobilise their growth potential and to contribute to a sustainable and prosperous Europe. It is thus paramount to equip the policy with sufficient means to be able to contribute in a substantial way to smart, sustainable and inclusive growth throughout the entire EU territory. Moreover, as an investment policy with instruments providing for job creation, research projects, innovation and social inclusion, cohesion policy can and must play a crucial role in the delivery of the Europe 2020 strategy. This was also fully acknowledged by the European Council of March 2010, which approved the Europe 2020 strategy.

A strong and ambitious Common Agriculture Policy (CAP) requires an appropriate budget in order to contribute to the Europe 2020 goals and to maintain the potential of agricultural production throughout the EU at the same time as contributing significantly to climate change and environmental challenges and to the Lisbon Treaty objectives of a fair standard of living for the agricultural community and ensuring the availability of food supplies. The future CAP will be a policy that caters not only for a small, albeit essential, part of the EU economy, but also a policy of strategic importance for food security, the environment and territorial balance of the EU.

The proposed reform of the CAP enhances the contribution of the policy of Europe 2020 goals and includes a mechanism for redistribution of direct support between and within Member States to create a more equitable and efficient policy. At the same time it gives Member States flexibility in adapting the payment system to regional needs (such as, for example, additional support for areas with natural constraints or particular social or environmental challenges) and creates incentives for innovation and knowledge transfer to enhance rural growth and reduce disparities.

Two years after the entry into force of the Treaty of Lisbon – parliamentary experience

Subsidiarity justifications and Impact Assessments

The Commission acknowledges that analysis of compliance with the subsidiarity principle is not always sufficiently reflected in explanatory memoranda. The Commission, however, would like to draw the attention of the COSAC to the fact that this does not mean that such analysis is missing, as in the great majority of cases very detailed justifications are included in the impact assessments (IA) that accompany all major Commission proposals. Subsidiarity is one of the fundamental principles taken into account by the Commission when carrying out its IA, and on which the Impact Assessment Board (IAB) focuses when scrutinising the quality of draft proposals. This being said, the Commission reiterates that it is fully committed to ensuring that subsidiarity justifications be better reflected in the explanatory memorandum of its proposals in the future.

At the same time, the Commission would like to emphasise that its IA system is operating effectively. This has been confirmed by the European Court of Auditors, which found that the Commission's IA system "has been effective in supporting decision-making within the EU institutions" and in raising the quality of proposals, and that the IAB genuinely contributes to the quality of the IA. The IAB has also demonstrated its independence by the nature of its opinions – which are often very frank – and by the fact that, on average, it asks the Commission services to redo parts of the analysis and to resubmit to the quality control of the IAB in more than one case in every three. The Commission would also draw national Parliaments' attention to the fact that the work of the IAB is transparent and that all IA and all IAB opinions are published on the Commission's website once the Commission has adopted the relevant proposal.

As regards the translation of IA, the Commission takes note that a number of national Parliaments consider that IA should be translated into all official languages. The Commission is not in a position to translate the full IA into all 23 official languages, which would mean 90.000 additional pages each year, or 180.000 additional pages if annexes to IA were also to be translated, due to the extra resource requirements and budget allocations that this would entail. However, the Commission would like to recall that its IA are always accompanied by a comprehensive summary of all key parts of the respective IA, which is translated into all official languages and transmitted to national Parliaments together with the legislative proposal. The Commission endeavours to ensure that these summaries contain all essential elements of the subsidiarity assessment made in the IA.

Commission's Work Programme

The Commission very much appreciated the exchange with COSAC on the future political priorities which took place in Warsaw on 4 October. It formed part of the preparatory process leading up to the recently adopted Commission Work Programme 2012. The Commission encourages COSAC to regularly focus its debates on policy priorities for the EU, so as to shape a shared vision of what can be addressed together at European level, and welcomes the opportunity to take part in such discussion. Furthermore, the Commission also looks forward to pursuing the political dialogue with national Parliaments through their opinions on the Commission Work Programme 2012.

Subsidiarity control mechanism and political dialogue

According to the Treaty, only an opinion identifying a possible breach of the principle of subsidiarity, and which is transmitted to the Commission within the deadline of 8 weeks, can be classified as a 'reasoned opinion' and counted against the thresholds mentioned in Protocol 2.

Regarding the comments of the COSAC on the substance and timing of Commission replies to national Parliaments' opinions, the Commission is committed to further improving the quality and the timing of its replies, both to reasoned opinions and to opinions sent in the context of the political dialogue. The Commission takes this opportunity to inform that it has already taken internal measures to achieve this objective.

As far as timing is concerned, the Commission has made improvements to its systems so as to ensure that national Parliaments will normally receive a reply within the Commission's self-imposed deadline of 3 months. In this context, the delays which occurred during 2011, and for which the Commission apologises, were mainly due to the significant increase in the number of opinions received (250 opinions received in 2009, 384 in 2010 and according to latest estimates around 600 in 2011). This is a development which the Commission very much welcomes, but one which has required adjustments to internal procedures and allocation of resources.

As regards the substance and level of detail of its replies, the Commission would first of all like to clarify that, as a matter of principle, it endeavours to reply to any question or comment raised in national Parliaments' opinions. However, there are also cases, where a written reply cannot be entirely definitive or explicit, for example when the Commission is taking part in sensitive negotiations or when the reflection on the future action is still ongoing. For these reasons, the Commission invites national Parliaments to pursue the political dialogue with the Commission, where appropriate, beyond a first exchange of views.

The Commission would also like to clarify that it always replies individually to any national Parliament. In specific cases, namely where several national Parliaments have raised similar concerns or questions, there could, however, be broader considerations, which the Commission would like to share with all national Parliaments. This is why some replies contain a more general section followed by answers to more specific individual concerns raised by each national Parliament.

Delegated acts

The Commission takes note of the concerns raised by national Parliaments with regard to the use of delegated acts. In this context, the Commission would like to emphasise that, as explicitly stated in Article 290 (1) TFEU, a delegation of power is a matter for the legislator to decide. It is clear however that it can never cover essential elements of the legislation - a power delegated to the Commission under this Treaty article must be limited to "non-essential elements".

The concept of "non-essential elements" is not new: similar measures adopted in the past under the old "comitology" procedures have always been limited to "non-essential elements" and the Commission was never authorised to amend or supplement core elements of legislation. The case law of the Court of Justice has defined the concept of "essential elements" as "*rules which (...) are essential to the subject-matter envisaged*" and "*which are intended to give concrete shape to the fundamental guidelines of Community policy*" (Case C-240/90 Germany vs. Commission, §§ 36 and 37).

These principles are fully respected by the Commission. It must be noted nevertheless that “non essential elements” have to be defined on a case by case basis in each act and there is a margin of appreciation for the legislator.