EU Regulation

REFORM DELIVERY TOOL TO SUPPORT STRUCTURAL REFORMS

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KEY ISSUES

Objective of the Regulation and Communication: The Commission wants to introduce a "reform delivery tool" to provide financial support for structural reforms in the Member States and test it in a pilot phase.

Affected parties: Member States and their regional subdivisions as well as recipients of resources from the EU Fund for Regional Development, the European Social Fund and the Cohesion Fund.

Pro: (1) The reform delivery tool may facilitate the implementation of structural reforms in the Member States and thereby improve the stability of the eurozone.
(2) The right of Member States to propose which reforms will be supported, reduces the risk of Member States failing to use the instrument.

Contra: (1) There is a danger that Member States will only propose structural reforms which they would have undertaken anyway.
(2) There is a lack of comprehensible criteria for determining the amount of financial aid in the pilot phase.

The most important passages in the text are indicated by a line in the margin.

CONTENT

Title

Communication COM(2017) 822 of 6 December: New budgetary instruments for a stable euro area within the Union framework and
Proposal COM(2017) 826 of 6 December for a Regulation amending Regulation (EU) No 1303/2013 laying down common provisions […] **as regards support to structural reforms in Member States**

Brief Summary

Note: Article numbers without reference to a specific piece of legislation relate to the Regulation laying down common provisions [(EU) No. 1303/2013] or to the articles to be added to it.

- **Context and objectives**
  - With few exceptions, legislative competence for economic policy - such as fiscal, taxation and labour market policy - lies with the Member States. EU economic policy is therefore primarily limited to coordination and monitoring of the economic policies of the Member States.
  - Coordination of the economic policies of the Member States takes place within the framework of the "European Semester" [COM(2010) 367; see cep**PolicyBrief**], in which the Member States submit their national reform programmes and at the end of which the Council adopts "country specific recommendations" based on Commission reports (see Art. 2-a Economic Policy Coordination [(EC) 1466/97]). These recommendations generally contain proposals for structural reforms in the Member States.
    In their national reform programmes, the Member States set out how they are going to deal with the economic problems and risks identified by the EU.
  - According to the Commission, Member States are not sufficiently implementing the structural reforms recommended by the EU [COM(2017) 291, p. 18; cep**Input** 06/2017]. It wants to change this by way of an "reform delivery tool" (hereinafter "Tool") and at the same time take part in the coordination and the sequencing of reforms [COM(2017) 822, p. 8 et seq.].
  - This Communication sets out the main features of the Tool. The Commission wants to submit a concrete proposal in May 2018.
  - The Tool will be introduced "post" 2020. Under this proposal for a Regulation, the Commission intends to test the Tool in a pilot phase for the period 2018–2020 [COM(2017) 826, Explanatory Memorandum, p. 1].
  - In the Communication, in addition to the Tool, the Commission also proposes [COM(2017) 822]:
    - "stronger technical" support for euro and non-euro countries in the implementation of structural reforms [COM(2017) 825; cep**PolicyBrief** to follow],
    - a "stabilisation function" to support Member States in the event of shocks [see cep**PolicyBrief** 2018-04],
    - a "convergence facility" to support non-euro countries with the introduction of the euro [cep**PolicyBrief** to follow] and
    - a backstop for the European Bank Resolution Fund [COM(2017) 827; cep**PolicyBrief** to follow].

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- **Main features of the Tool "post" 2020 (Communication): Procedure**
  – The Tool provides for a procedure which ends with payment of financial aid if a Member State implements structural reforms [COM(2017) 822, p. 9 et seq.]. The procedure consists of five steps.
  – **Step 1:** A Member State submits a "reform commitment package" to the Commission for which it would like to receive financial aid. The reform commitment package contains:
    - a detailed set of measures with structural reforms,
    - milestones and targets for implementation of the relevant structural reforms,
    - a timetable for completion of the structural reforms which cannot be more than three years.

    The structural reforms proposed in the reform commitment package should
    - apply to those economic policy difficulties identified by the EU in the Member State during the European Semester,
    - contribute to the resilience of the affected economy and
    - have positive spill-over effects on other Member States.
  – Where, during the "European Semester", a Member State is found to have excessive macroeconomic imbalances, the Commission will invite the Member State to propose structural reforms to tackle these imbalances.
  – **Step 2:** The Commission assesses the proposed reform commitment package.
  – **Step 3:** The Member State and the Commission jointly select the structural reforms which will receive support and agree - taking account of "observations" from other Member States - on the final reform commitment package [COM(2017) 822, p. 10].
  – **Step 4:** The Member State reports on the progress in the implementation of the reform commitment package in its National Reform Programme.
  – **Step 5:** The Commission assesses the progress made based on the milestones and targets and publishes its assessment in the applicable Country Report. The Commission will decide on the award of financial aid based on the milestones and targets reached.

- **Main features of the Tool "post" 2020 (Communication): Funding**
  – For funding, the Commission wants to create a new budget line in the next Multiannual Financial Framework (MFF) post-2020 "in the order of several billion euro" [COM(2018) 98, p. 10]. The MFF determines the maximum expenditure for the annual EU budgets for at least five years (Art. 312 TFEU).

- **Pilot phase for the Tool 2018–2020 (Regulation): Procedure**
  – The Commission wants to test the Tool in a pilot phase in the period 2018-2020. The Member States will decide whether they want to use it (new Art. 22 (1a)).
  – **Step 1:** see above (new Art. 23a (1), Recital 3).
  – **Step 2:** The Commission assesses the proposal. It may (new Art. 23a (2))
    - request additional information from the Member State,
    - make observations and/or
    - request the Member State to revise the proposal.
  – **Step 3:** The Commission adopts - as an implementing act - a decision with (new Art. 23a (3))
    - the reform commitments,
    - the amount of financial aid and
    - where applicable, interim payments for milestones achieved.

    The financial aid
    - is paid in full once the reform commitments have been fully implemented (new Art. 23a (5)),
    - is managed directly by the Commission without involvement of the Member States (new Art. 23a (4)) and
    - is not linked to any co-financing by the Member States (new Art. 23a (4)).
    - The amount of the financial aid must be "proportionate to the nature and importance of the reform" but is not linked to the actual costs of the reform (new Art. 23a (3)).
  – **Step 4:** see above (new Art. 23a (6), Explanatory Memorandum, p. 2).
  – **Step 5:** see above (new Art. 23a (6), Explanatory Memorandum, p. 2).

- **Pilot phase for the Tool 2018–2020 (Regulation): Funding**
  – For funding, resources will be used from the following funds [new Art. 91 (4)]:
    - European Regional Development Fund,
    - European Social Fund and/or
    - Cohesion Fund.
  – These (and other) funds dispense resources to Member States for fund-specific programmes [unamended Art. 4 (1)]. Member States can apply for the award of a tranche when the corresponding eligible expenditure is made [unamended Art. 77 and 78]. 6% of the total amount allocated to a programme of a Member State is however retained as a "performance reserve" [amended Art. 20, sub-para. 1 and Art. 77 (2)] and can only be used by the Member State after 2019 and where the Commission finds that the relevant programmes have achieved their "milestones". [Art. 22 (2) and (3)]

– A Member State, that wants to use the Tool and commits to making structural reforms, can use the means of the "performance reserves" which have been set up for its programme [new Art. 22 (1a)].

Main Changes to the Status Quo

- Until now, the EU funds were intended to support economic, social and territorial cohesion in the EU (Cohesion Policy). In the test phase, certain fund resources can also be used for structural reform in the Member States.
- Until now, only sanctions were possible within the framework of economic policy coordination. In future, financial support for structural reforms will also be possible.

Statement on Subsidiarity by the Commission

Support for Member States in carrying out structural reforms also serves to promote economic, social and territorial cohesion in the EU. The procedure can therefore be introduced at European level.

Legislative Procedure

7 December 2017	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Leading Directorates General	General Secretariat of the Commission (Jordi Ayet-Puigarnau)
Committees of the European Parliament:	Regional Development (leading), Rapporteur: Lambert van Nistelrooij (EPP), Constanze Krehl (S&D)
Federal Ministries:	TBA
Committees of the German Bundestag:	Committee for European Union Affairs (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

Formalities

Competence:	Art. 177 and 175 (3) TFEU (Cohesion Policy)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

Basically, countries have an interest in structural reforms, because they reduce unemployment and increase economic growth. Nevertheless, most Member States fail to implement the structural reforms recommended to them by the EU. This results in a divergence in economic growth and competitiveness within the EU. Both jeopardise the stability of the eurozone. Varying levels of economic growth is problematic because the European Central Bank (ECB) can only make monetary policy for the whole eurozone and it bases this on the average of the eurozone. If rates of growth diverge in the eurozone, the ECB's monetary policy will be too expansive for some and too restrictive for others. Failure to carry out structural reforms to promote growth therefore has a negative impact not only for the affected eurozone country itself but also for all the other eurozone countries.

Diverging levels of competitiveness between the eurozone countries can mean that companies in less competitive eurozone countries are pushed out of the market. This results in an erosion of the national tax base. The creditworthiness of these countries then suffers. In the worst case, a eurozone country will have to apply for financial aid from the European Stability Mechanism (ESM). Here too, the failure to make structural reforms not only has negative consequences for the directly affected eurozone country but also for all the other eurozone countries.

One reason for the failure to implement recommended structural reforms is the lack of agreement between the eurozone countries as to which eurozone country should take which measures to achieve convergence of growth and competitiveness. Thus, eurozone countries with a high level of competitiveness – particularly those with current account surpluses – consider that those eurozone countries with a low level of competitiveness are under a duty to increase their competitiveness by way of structural reforms. Eurozone countries with a low level of competitiveness, on the other hand, believe that the eurozone countries with high current account surpluses are under a duty to reduce these surpluses.

The dangerous divergence of economic growth and competitiveness in the eurozone can only be sustainably remedied by way of structural reforms. **Financial support by way of the** proposed **Tool may**, on the one hand, **facilitate necessary structural reforms and thereby improve the stability of the eurozone.** However, it also gives Member States an incentive to refrain from making structural reforms unless and until support is granted. This reduces the individual responsibility of the Member States.

The following is a detailed assessment of the design of the Tool:

The Member States' right of proposal may mean that they only propose structural reforms which they would have taken anyway. However, it also reduces the risk that they use the Tool as an adjustment programme, as is currently the case on Greece, or **refuse take-up** because they feel that reforms are being forced on them by the Commission.

The fact that the reforms should have a positive cross-border spill-over effect, increases the likelihood that the Tool will support those reforms that also benefit other Member States. For this reason it is also appropriate that their "observations" are taken into consideration.

It is not sufficient for the purposes of monitoring implementation of reform commitment packages that, as proposed by the Commission, **Member States report on them in their national reform programmes. Instead, local checks are necessary which will**, however, **reduce acceptance of the Tool.**

Financing the Tool in the pilot phase by way of the performance reserve will mean that Member States will not receive any additional money for reforms but only resources which they would in any case have been able to use for the support programmes of the three funds. On the one hand, this does not place any burden on the other Member States. On the other hand, it reduces the likelihood that the Tool will be used because take-up essentially has the advantage that Member States will not have to provide co-financing in order to acquire EU funds.

Legal Assessment

Legislative Competency

The EU can amend the provisions of the relevant funds under Art. 177 TFEU. In addition, it can create specific funding instruments outside the regulatory scope of the funds (Art. 175 (3) TFEU) in order to pursue cohesion targets. This legal basis is also applicable here. Although the proposed Tool is primarily aimed at coordinating national economic policies (Art. 121 TFEU), such coordination also contributes indirectly to the cohesion targets.

Subsidiarity.

Unproblematic because Member States cannot create such a Tool.

Proportionality with respect to Member States

With this Tool, the Commission cannot go beyond what is necessary to achieve the envisaged coordination of economic policies. **The Tool must** therefore **limit itself to the choice and general direction of the structural reforms.** The Commission cannot insist on the specific form which reforms will take. In particular, it must allow Member States the discretion to make their own decisions, e.g. as regards the choice of means, time frame and sequence of structural reforms. This must be made clear in the proposal for the regulation.

Compatibility with EU Law in other respects

In some areas, the proposal for the regulation is not sufficiently precise and thereby gives rise to legal uncertainty (Art. 2 TEU). **There is a lack of comprehensible criteria for determining the amount of financial aid in the pilot phase.** The requirement that the amount of financial aid must be "proportionate to the nature and importance of the reform" (Art. 23a (3)), is too vague. The budgetary principle of sound financial management (Art. 317 (1) TFEU) also requires further specification of the criteria because, here, for the first time, support is provided irrespective of need. It is also necessary to clarify whether the implementing act will be adopted in the examination procedure or the advisory procedure; due to the impact of the Tool on the reform policy of a Member States, the examination procedure should be used in which the Commission cannot in principle adopt any implementing act against the will of the representatives of the Member States (Art. 5 and 6 Comitology Regulation [(EU) No. 182/2011]).

Impact on German Law

The Federal Government must agree with the *Bundesrat* on the use of performance-related reserves for structural reforms (Section 5 (2) Law on Cooperation between the Federation and *Bundesländer* in European Affairs - EUZBLG).

Conclusion

Financial support by way of the Tool may facilitate necessary structural reforms and thereby improve the stability of the eurozone. The Member States' right of proposal may mean that they only propose structural reforms which they would have taken anyway. However, it also reduces the risk that they refuse take-up of the Tool. It is not sufficient, for the purposes of monitoring the reform commitment packages, that Member States report on them in their national reform programmes. Instead, local checks are required, which will reduce the acceptance of the Tool. The Tool must limit itself to the choice and general direction of the structural reforms. There is a lack of comprehensible criteria for determining the level of financial aid in the pilot phase.