5th MEETING of the High Level Expert Group on Monitoring Simplification for Beneficiaries of ESI Funds

28 September 2016

Note and Actions Points

1. Opening remarks from Chairperson

The Chairperson opened the meeting. 8 members of the high level group were present, while in addition Anna Lisa Boni could follow the discussion via webstream. The Chairperson welcomed the new Director-General for Regional and Urban Policy, Mr Marc Lemaître, recalling his past experience working for commissioners responsible for regional policy and budget.

The Chairperson noted the recognition the group has already gained, with his invitation to present the group's work in the Budget Focused on Results conference on the day before the meeting, and the press conference which the Chairperson had together with Commissioner Corina Crețu on the same day. He thanked the Commission for including many legislative proposals made by the High Level Group in its proposal adopted on 14 September, which proves that the group's work is taken seriously by the Commission. It was agreed that a discussion on the Commission's follow-up to the non-legislative proposals will be scheduled for the November HLG meeting.

2. Presentation by the Commission on the mid-term review of the MFF and how the recommendations from the HLG were taken on board followed by an exchange of views with the members of the HLG.

The Commission explained how it has addressed the recommendations already made by the HLG in the framework of the Multiannual Financial Framework (MFF) review exercise.

The Commission has thoroughly analysed the proposals made by the group for the ongoing programming period and decided to incorporate many of the legislative proposals in the MFF review exercise, while other recommendations remain valuable inputs, which will feed into the post-2020 discussion.

Presentation of "the omnibus" proposal by the Commission

The presentation of proposals related to the e-governance, access to funding for SMEs and financial instruments reports were made by DG REGIO, while those linked to simplified costs were presented by DG Employment. The specific parts on EAFRD and EMFF were covered by the representatives of the relevant DGs.

The proposed changes for ESI Funds, which are part of the mid-term package adopted by Commission on 14 September 2016, are focusing on:

- Reducing administrative burden for beneficiaries;
- Improving synergies with other EU instruments;
- Streamlining financial instruments;
- Increasing flexibility for investments in Member States.

The HLG recommendations concerning **e-governance** focused on promotion of best practice and non-legislative actions. However, 2 of the suggestions had legislative character and were addressed in the Commission's proposal: the amendment to Art. 140 will clarify, as the HLG requested, that beneficiaries do not need to keep paper copies of documents. This clarification will also help with implementation of the “once only” principle, and making controls less obtrusive. The proposal to increase flexibility of using technical assistance will facilitate financing integrated IT systems related to all ESI Funds, including EAFRD and EMFF.

As regards the report on **financial instruments**, the Commission in its proposal addressed the issue of direct entrustment of implementation tasks to publicly-owned banks or financial instruments under certain conditions. Significant simplification potential is provided also by proposals from the Commission related to combination of ESIF with EFSI. There is a need, especially in the context of the discussion about the post-2020 period, to discuss if more consolidation, ensuring critical mass and proper diversification of risks, might not be needed, improving professionalization and standardisation of financial instruments.

As regards the report on **access of SMEs to financing**, most of the recommendations have a non-legislative character. The proposal from the Commission introducing the possibility to use pro rata basis in case of support for projects financed simultaneously from different funds, e.g. ESF and ERDF, could be viewed as facilitating joint calls for proposals, as the HLG report advocates.

The Commission has not proposed to make the Small Business Act mandatory in this period, as it is already a part of ex ante conditionalities and at this stage improving its application should rather be addressed in a non-legislative way.

The alignment of State aid requirements, especially with Horizon 2020 in the context of "seal of excellence" is a separate discussion in the context of general block exemption regulation, with participation of DG COMP and DG RTD, and the direction suggested in the HLG discussion and elsewhere is not overlooked. The Commission decided not to include the suggestion to enable access to funding for firms in difficulties, considering that risks outweigh potential benefits, and the circumstances which justified temporary easing of the restrictions in the 2007-2013 period, in the height of the financial crisis, are now different.

The Commission's proposal includes also other simplification measures, which go beyond but are sometimes related to the issues discussed in the context of the HLG. Those include a separate investment priority for migration, making it possible to finance bigger culture and tourism projects, more flat rates for revenue-generating projects, and other.

The report **on simplified cost options** is the area where many proposals of the HLG have legislative character applicable to the 2014-2020 period and where the Commission's proposal includes amendments requested by the HLG experts. The key changes related to the HLG recommendations are as follows:

- extending use of flat rates now available only for the ESF or the ETC to all ESI Funds; the provisions related to staff costs were also clarified in relation to part-time workers and allowances paid to participants;
- removing the upper limit on lump sums;
- extending the possibility to approve methodologies through the delegated acts to give bigger legal certainty;
- making it possible to connect financing with the speed of implementation: payment triggered by conditions linked to progress of implementation.

The High Level Group proposed also to extend mandatory use of simplified costs options. While the recommendation was presented in the context of post-2020 period, the Commission considers that there is scope to bring such a change forward and make it applicable in the current period. Building on the model already used in the ESF, it proposes to double the current threshold to cover more projects and extend the obligation to small ERDF projects as well.

The Commission explained why a few suggestions are not included in the proposed amendments:

- the term "up to" in Art. 68 related to flat rates was kept because it gives managing authorities useful flexibility;
- after careful consideration, the Commission's proposes to keep current provisions restricting use of simplified costs in the case of public procurement. Because of public procurement rules many requirements would still need to be kept, and the simplified costs options would be "on top" instead of replacing normal rules, making the whole set-up very complex;
- clarification of rules of application of State aid framework in the case of SCOs is part of a separate process which was not covered by this legislative package; the Commission is working on finding a good solution and the HLG will be informed about future progress.

The Commission's legislative proposal includes also other changes in the ESF regulation. The amendments to Article 13 and 14 are the consequence of moving the relevant provisions to the CPR, to make the options available for other ESI Funds. One important amendment concerns increasing flexibility on the way data for certain common indicators for ESF operations are to be collected and reported.

The Commission proposes also to reduce and streamline regulatory requirements for the use of Joint Action Plans. This proposal provides a link with the Budget Focused on Results initiative, with payments based on outputs and results instead of inputs. In order to encourage use of the results-based method, the Commission will offer further incentives outside of the legislative proposal: for those authorities which would agree to implement pilot applications, up to 90% additional financing from the funds at disposal of the Commission could be made available.

DG AGRI underlined that all proposed changes related to EAFRD had to conform to 3 principles: they should provide real simplification for beneficiaries, ensure sound financial management and do not undermine the key features of the political agreement which forms the basis for the 2014-2020 rules: it was agreed during negotiations that new provisions need time to be tested in practice and only then reviewed.

In response to the HLG recommendations the Commission proposes to streamline support to young farmers, simplify rules on selection criteria and provide more flexibility in the case of catastrophic events in rural areas. The proposal introduces also an income stabilisation tool with a lower threshold for compensations and clarification on durability in case of leasing.

DG MARE explained that a significant part of EMFF payments is already not based on real costs, but on amounts established ex ante, hence providing a mechanism equivalent to simplified cost options. Since methodologies for calculating such compensation are included in operational programmes, and hence assessed by the Commission, it gives the beneficiaries and authorities more legal certainty, which was requested by the HLG in the context of other ESI Funds. Also many concerns related to State aid do not apply to EMFF, due to a different State aid regime.

The Commission's proposal includes an important amendment related to net revenue generating operations. While e-cohesion is not obligatory for EMFF, most of the Member

States will use e-solutions, and can therefore benefit from the proposed amendments related to the e-government report.

Discussion

During the discussion members strongly welcomed the legislative proposals by the Commission, which especially in the case of simplified costs options build strongly upon HLG recommendations. The proposals came much more promptly and are more extensive than could have been expected. The members specifically mentioned extending of fund-specific options to all funds (off-the-shelf flat rates use of delegated acts to provide more legal certainty), an option to entrust implementation tasks to promotional banks, clarification that no paper copies are needed and facilitating of joint calls for proposals by more than one fund by explicitly allowing pro-rata allocation as particularly useful.

Most of the members remained unconvinced by the Commission arguments defending restrictions on the use of simplified costs options for projects subject to public procurement rules and reiterated their recommendation to amend CPR in this context. They believe application of this provision raises a lot of practical questions related to interpretation and is not justified. Some members strongly supported the Commission when it comes to making simplified costs options obligatory for more projects already in 2014-2020, while others see risks of delays and would prefer such provisions apply only in the new period. Some members reiterated also their support for removing "up to" in Art. 67 of the CPR.

In the context of financial instruments, there was a broad agreement with the statement by Marc Lemaître that the support through financial instruments could be too fragmented at the moment and in the future the number and size of financial instruments should be reassessed, as critical mass is needed for them to work effectively, and some form of consolidation in the post-2020 needs to be considered. In the context of the financial instruments in the 2014-2020 period, many members mentioned the need to clarify if and how to document that the funds were used for their intended purpose, while respecting nature of financial instruments and differentiated approach towards loans and guarantees and proportionality related to different levels of engagement of EU funds in different forms of support. This issue was not addressed in the Commission's legislative proposals, but in the opinion of many members needs urgent attention. Some members underlined that while proposals related to SME Initiative may be useful, most of financial instruments have different objectives and are implemented in a different way, and need clarity and simplification even more.

In the context of the report on financing of SMEs, the HLG members reiterated the need to ensure clear and stable rules, in particular no retroactive application of rules. The reasons for not making Small Business Act obligatory were understood, but practical application of the related ex ante conditionality is very different in different Member States, so the Commission should how the shortcomings, where they exist, could be addressed effectively in a non-legislative way.

Some members stressed the need for the Commission to respond to and implement fast the non-legislative recommendations, as waiting with that until the end-of-November meeting would risk causing further delays. The Commission explained that all the reports of the HLG as well as the main messages from the discussion are disseminated widely within the Commission as soon as they are available, and are taken into account.

The chairperson summarised the discussion thanking the Commission for the significant number of recommendations taken into account and for explanation about those which were not included at the moment. The extent to which this HLG's recommendations were already acted upon is unusually high compared to similar groups. Still, the group's role is to provide recommendations, not to replace the Commission, the Council and the Parliaments in fulfilling their roles specified in the Treaty. The group will monitor progress of implementation of the proposals and their impact on actual simplification for beneficiaries, putting pressure so there are no delays in adoption. However, after examining the response related to the non-legislative recommendations and finalising the discussion on the cross-cutting audit issues after the November meeting, the focus of the HLG discussion should move towards the post-2020 period.

3. Exchange of views on how the work of the HLG on post 2020 will be taken forward.

Nicola de Michelis, head of cabinet of Commissioner Corina Crețu, thanked the HLG on behalf of the Commissioner for the recommendations so far. The joint press conference of the Commissioner and the Chairperson on the day before received good coverage in the media. He noted however that even with all the improvements included in the omnibus proposal implemented and following up on the HLG other recommendations, the discussion on the future of the Cohesion policy, its financial weight within the EU budget, and the shared management in general, will be much more difficult than in the past. The risk is greater not only because of the negative perception of the policy by decision makers from outside, but because many those who implement and benefit from the policy, feel it is imploding under the weight of its own rules and consider opting out. He suggested that the group could focus on 2 elements which could prove to be decisive in the discussion about the future:

- if and to what extent the current approach, in which the same rules apply to everyone, irrespectively of amounts and institutional capacity, could be altered? Under what conditions simpler rules, even only national rules, could apply, and when, on the other hand, even more hands-on participation of the Commission in management could be justified?
- finding a way to prevent current problem of the delayed start of implementation, so the EU funds are effectively put into use and work towards economic development from 1 January 2021.

He explained that for the HLG to effectively feed into the already started decision making process of the Commission, the concrete inputs from the HLG on the direction to be taken would need to be available in the first half of 2017, with the following months of the remaining HLG mandate could be used to make the proposals more specific or react to what the Commission would be presenting.

The discussion among the HLG members concentrated mainly on the initial reactions to the suggested differentiated approach. A range of different options and risks were suggested for further discussion:

- results-based budgeting as a way to simplify for a broad range of programmes; the principle of sound financial management, and economy, effectiveness and efficiency in particular, should be pivotal when deciding about scope of the results-based approach;
- if differentiation is needed, criteria for differentiation should be simple, to avoid adding yet another delaying assessment step in the beginning of the process; national rules could apply for all programmes, without need for differentiation, if the focus of the assessment is very focused on results-related criteria, and all payments related to results;
- harmonisation of rules applicable to shared management and centrally managed programmes; especially in the case of SMEs, they do not understand why for the same

type of support State aid requirements or audit burden is different depending on the management mode; among ESI Funds, no options, including reducing number of funds, should be ex ante excluded;

- the HLG could focus on very specific "small" issues already identified: State aid, public procurement, looking for possible standardisation, transferring good practices from centrally managed instruments, and making obligatory more off-the-shelf simplification mechanisms, as in the case of SCOs - while stressing the benefit of the overall continuity of rules; the opposite suggestion was to abandon shared management model in the current form, replacing it with a system where the Commission directly deals with beneficiaries, without Member States involved;
- criteria used for differentiation should be well justified, however current system which keeps the rules the same irrespectively of different sizes of allocations and scope of programmes is already viewed as insufficiently reflecting proportionality principle and therefore not justified;
- proper definition of what constitutes the main objective of the Cohesion policy and other ESI Funds is an important element of the future system;
- a risk that re-nationalisation of ESI Funds would make the positive aspects of the EU support even less visible to the general public, deepening the perception that "bad things come from Brussels" why "good things are the result of national policies"; current ESI Funds provide relatively high transparency and this should not be weakened in the new period;
- genuine support for subsidiarity as the only effective way to ensure effectiveness of investments, with more flexibility and responsibility at local and regional level;
- follow up to the gold-plating would be needed, without excluding potentially a radically new approach to audit.

Many members also stressed the need to reduce number and complexity of requirements, both those included in the regulations and guidelines, while addressing the need to provide greater legal certainty for authorities and beneficiaries.

Mr Nicola de Michelis thanked for the promising first ideas. He stressed the need to be ready to change the current too complex system but underlined that it is unrealistic to expect that all payments will be linked to results only, as the Commission will still be held responsible for ensuring legality and regularity in the context of discharge procedure. ESI Funds are different from other policies as they support policies, rather than individual projects, which means that its intended impact is broader than just investments financed from them. Replacing shared management with a project-based system would fundamentally alter the logic of the support, affecting possibilities to influence structural changes. Making EU funds closer to citizens could also be difficult to reconcile with all decisions being made in Brussels.

The Chairperson instructed the Secretariat to prepare a draft work plan based on the discussion which would allow for recommendations to be issued by May 2017 and have it distributed by e-mail for comments of the members, so it can be agreed at the next meeting.

4. Review of draft conclusions and recommendations on gold plating.

Mr Paweł Chorąży presented the draft report which was based on the discussion during the previous meeting. After a discussion with the members it was decided that the proposal from some members to establish an independent “audit committee” as a mediating body between the Member State or the controlled institution and the auditors will not be included in the report related to gold plating, but will be further discussed at the next meeting in the context of the report on cross-cutting audit issues. The members agreed that the following elements should be further underlined in the final version of the gold plating report:

- consistency with State aid and public procurement rules applicable to ESI Funds, as well as the recommendation to clarify definition of "contracting authority" in the procurement context;
- more specific proposals related to Article 148 CPR which should extend the scope of application of single audit principle by raising the threshold or covering also controls done by the managing and certifying authorities;
- more stress on the need for actions from the Member States, which cannot just wait for the Commission auditors to review their procedures to detect gold plating, and which should be strongly encouraged to take up simplification options provided; while many recommendations in the report are addressed to the Commission, members considered underlining these aspect is necessary to maintain overall balance of the document;
- in the context of the post-2020 period, explain in more detail the nature of rules, which should be less prescriptive about how certain objectives are to be achieved and which need to be applied in a consistent way by auditors from all institutions,
- the request to the Commission to consider potential advantages of translating relevant texts, including guidelines, into all EU national languages.

The Chairperson asked the rapporteurs to prepare, with assistance of the Secretariat, of the final text incorporating the agreed comments which should be then subject to a written approval procedure.

5. Brief presentation by HLG Secretariat of the REFIT opinions relevant for ESI Funds followed by an exchange of views with the members of the HLG on the way in which HLG should respond to inputs coming through the REFIT process.

The Secretariat presented a detailed presentation summarising all the opinions referred to the High Level Groups by the REFIT platform. The members took note that many of the suggestions on the issues covered by already finalised reports coincide with the recommendations of the HLG, while other could be useful inputs in the discussion in the forthcoming discussion on the cross-cutting audit issues.

The Chairperson instructed the HLG secretariat to prepare a draft summary based on the reports so far (referring to the submissions which were already taken on board), including the gold plating report, and the work plan (explaining when the issues still to be covered will be discussed), and send it for comments to the HLG members before the next meeting. It was also suggested that in preparing the discussion on 29 November related to audit, the rapporteur takes into account the relevant suggestions resulting from the REFIT process.