REFIT Platform Opinion

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REFIT Platform Opinion on the submission by the Finnish Authorities on 'Administrative and monitoring systems' of the Cohesion Policy.

The REFIT Platform has considered the issue raised by the Finnish Authorities that an overall assessment of the economic impact of the administrative and monitoring system of the cohesion policy should be carried out.

A majority of Platform members recommend that the Commission acts to remove inconsistencies and submits this Opinion to the High level group on Simplification.

Detailed Opinion

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1 Submission XVI.2a by the Finnish Survey for better regulation

For years now, the legislation on cohesion policy is becoming increasingly convoluted as efforts have been made to adjust to the different administrative models of the individual Member States and regions. The Commission has decided to appoint a high-level working group consisting of the representatives of the European structural and investment funds to oversee the streamlining of the administration for the beneficiaries. Finland's position is that aside from the beneficiaries, the overall economic impact of the administrative and monitoring system of the cohesion policy should also be assessed.

As far as the costs specifically identified as ineligible for support in EU legislation are concerned, the ERDF Regulation (EU No 1301/2013) should be revised with regard to interests on the ancillary payments related to leasing and hire purchases, and the conditions for provision of support for companies facing financial difficulties.

2 Policy context

Regional Policy (also known as Cohesion Policy) is the EU's main investment policy. It targets all regions and cities in the European Union in order to support job creation, business competitiveness, economic growth, sustainable development, and improve citizens' quality of life.

In order to reach these goals and address the diverse development needs in all EU regions, € 351.8 billion – almost a third of the total EU budget – has been set aside for this policy for 2014-2020.

Regional Policy is delivered through three main funds: the European Regional Development Fund (ERDF) and the Cohesion Fund (CF) and the European Social Fund (ESF).

The ERDF was created in 1975 to help redressing 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 (Art. 176 of TFEU).

The ESF was created in 1957 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 (Art. 162 of TFEU).

The Cohesion Fund was set up in 1994 to provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure. It is intended for countries whose per capita GNI (gross national income) is below 90% of the Community average.

Apart from the three Funds under cohesion policy, other Funds have the potential to contribute to structural and investment goals. These are:

- the European Agricultural Fund for Rural Development (EAFRD), which is a Fund under the Common Agriculture Policy;

- the European Maritime and Fisheries Fund (EMFF) established in 2006.

For the 2014-2020 funding period, the Funds supporting cohesion policy have been brought together with the EAFRD and the EMFF under a common strategic and legal framework in order to maximise their effectiveness and optimise synergies. They are named "European

Structural and Investment Funds" (ESI Funds) and cover more than 41% of planned EU spending for the 2014-2020 Multiannual Financial Framework (€ 454 billion).

Current state of play

In July 2015, the Commission set up a High Level Group of Independent Experts on Monitoring Simplification for Beneficiaries of the ESI Funds (the HLG ESIF), focusing particularly on administrative burden reduction. The group aims to: assess the uptake of, and commitment to, simplification opportunities by Member States; analyse the implementation of simplification initiatives; identify good practice in matters concerning administrative burden reduction; and make recommendations to improve the uptake of simplification measures for 2014-2020.

The first meeting was held in October 2015 and another seven are planned until February 2018. The Group is accompanied by a recently launched interactive platform, where stakeholders can share ideas on simplification of the ESI Funds and vote for the best suggestions.

3 Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

The suggestion by Finland is recognised by the Stakeholder group. In the past, the EU has strived to reduce the administrative burden for SME's, which then resulted in increased bureaucracy for managing authorities (90-day payment rule for example).

It is widely acknowledged that the administrative and monitoring system of Cohesion Policy is too strict compared to its benefits. The European Commission should carry out an overall economic and territorial impact assessment of the administrative and monitoring system of Cohesion Policy.

Primarily, simplification should contribute to a better, more effective and simpler use of the Funds in order to make the greatest possible contribution to achieving the Treaty objective of Territorial Cohesion and making the EU more competitive.

For the current programming period, given the ongoing implementation of the operational programmes, far-reaching legislative changes should be avoided in the interest of legal certainty. However, small changes to clarify rules and simplify implementation should be envisaged as soon as possible. However, given that the rules and regulations of Cohesion policy and the corresponding implementation system entail such a heavy administrative burden that fundamentally new delivery mechanisms for Cohesion policy should be envisaged for the next programming period.

Contradictory interpretations of rules are the main issue when it comes to auditing Cohesion Policy. Managing and audit authorities should develop, even before the programme priorities are decided, a common understanding of the audit regime as well as address possible contradictions between national and EU concepts and practices. They should jointly develop the audit regime and do so in a way to avoid multiple audit operations for a single project. Furthermore, this needs to be and clearly communicated to designated or potential delivery bodies and beneficiaries in a timely way – so they can also integrate the audit regime from the moment they started designing operations.

Moreover, progress should be made towards the so-called Single Audit System, which implies that a single operation should not be audited twice as different audit authorities build on each other's audit findings. This should be envisaged as one key element of a future REFIT initiative.

Audits should take into account the risks of error, past performance and overall size of projects. Overall, it is important to build mutual trust between the EU institutions and the national and regional administrations. Currently, the fundamental problem is that, as a reaction to past implementation problems, a culture of risk aversion has developed, and fear of penalties trumps a genuine culture of improvement.

A list of concrete proposals for legislative modifications was submitted to the REFIT Platform.

Eligible costs

The stakeholder group feels that it is unnecessarily restrictive that costs are now put within a specific category. Because this entails a serious risk of an Audit Authority rejecting a cost only because it was accepted within the wrong category (Delegated Regulation (EU) No. 481/2014). Also, when it is discovered that a cost should be moved to another category of the project budget in order to be eligible, this should be clearly communicated to the project. To the beneficiaries, this whole process comes across as being inefficient. *Simplified Cost Options (SCO)*

The Commission should seek to establish more "off the shelf" simplified cost options through delegated regulations in order to decrease the administrative burden and to help increase legal certainty for the managing authorities. Moreover, there should be guarantees concerning the compatibility of Articles 67 b) c) and d) and Article 68 of the CPR on the use of the simplified cost options under the GBER, which establishes the real costs for the establishment of aid thresholds. Finally, public procurement and simplified costs options should be compatible.

A list of proposals on how to simplify Cohesion Policy in the current programming period can be found following this link: http://cor.europa.eu/en/takepart/Pages/simplification-documents.aspx

Companies in financial difficulties

An issue has been identified about the application of State Aid rules regarding the prohibition to fund companies in financial difficulty (1303/2013 (Art. 3 sub 3d)), which do not allow aid to such companies. It is not clear why a company in financial difficulty is not allowed to receive compensation for costs made for a project

Removing Article 3.3 d) of ERDF Regulation EU No 1301/2013 excluding undertakings in difficulty from ERDF-support would solve the issue highlighted by the original submission.

Second-hand equipment

Second-hand equipment is eligible, provided that ‘no other assistance has been received for it from the ESI Funds’ (Article 7, paragraph 2a of Delegated Regulation (EU) No. 481/2014). The reason behind this determination is understood, however, the stipulation is perceived as problematic because in practice it is very difficult to prove that no other assistance has ever been received for the second-hand equipment

See attachment for a further elaboration and presentation of concrete examples of these issues concerning eligible costs.

Attachment

<u>Other comments made by members of the Stakeholder group:</u>

The EESC agrees that the audit procedures need to be simplified. In its Opinions on Structural Funds – General Provisions - as well as on the European Regional Development Fund the EESC stated that through an excessive emphasis on auditing and procedures, both national and European authorities are still inhibiting simple access to EU funding for SMEs and NGOs. Bureaucracy needs to be reduced, especially in countries where federal territorial systems create different layers of bureaucracy (points 1.5 and 1.4.3.2 respectively).

The Opinion on the Sixth Cohesion Report reiterates that red tape is a real barrier to participation for many entrepreneurs, as well as to efficient public administration. Simplifying and standardising procedures, rules and forms is both possible and desirable. Furthermore, the audit recommendations should be used (point 4.10).

Recommendations to the Commission:

- In the aforementioned Opinion on Structural Funds – General Provisions, the EESC proposed to set up a "one stop shop" approach for beneficiaries in order to make cohesion policy more "beneficiary led".
- The EESC suggested raising the threshold of EUR 100 000 – below which projects are audited only once, as per Article 140 – to EUR 250 000. This sum should apply to the EU funding component of such projects, in order to have further simplified rules (point 1.6).
- In its current work on "Maximising the contribution of the European Structural and Investment Funds (ESIF)", the EESC is concerned about the extent to which the simplification of procedures and costs is being adopted by the auditors working at the Commission. Often, an overly formal, administrative approach can be observed, which indicates the auditor's lack of practical experience of the audited sector. The EESC recommends that the simplification procedures be communicated in detail between experts in the different DGs and auditors to the Commission, as rules for spending the funds are quite often interpreted differently (point 3.2.8 of ECO/396 DT).
- In its current opinion on "New measures for development-oriented governance and implementation", the EESC aims to lay down a general framework on how the different elements of development policy can be harmonised and managed conjointly in order to decrease regulatory burdens and improve efficiency.

- The EESC strongly recommends introducing simplified cost options under the European Social Fund. For example, according to Art. 14(1), the task of defining simplified cost options is wrongfully delegated by the Commission to the Member States. However, the guide for the application of simplified cost options under Art. 14(1) states that the Member States shall define the simplified cost options and on the basis of the Member States' research the Commission shall adopt a delegated act which unnecessarily complicates the procedure and undermines the discretion given to the Member States. A proposed solution would be for the Commission to define standard scales of unit costs and lump sums for typical ESF activities, the calculation of which shall not be subject to audit (Point 3.2.9 of ECO/396 DT).

There is a set of environmental safeguards applied to Cohesion Policy funding during project application, project implementation and monitoring/evaluation, such as specific environmental information on particular indicators to be provided by the beneficiary in the project application and reporting later on, or the compliance with certain project selection criteria.

The intended reduction of bureaucracy should not compromise those requirements for reporting and compliance on environmental and climate protection standards.

Recommendation:

If the Commission decides to take action with regard to the simplification of the current shared management, it is essential that the requirements for reporting and compliance on environmental and climate protection standards are not compromised.

3.2 Considerations of the REFIT Platform Government group

Currently the Cohesion policy covers all EU Member States. However, the financial envelopes vary significantly between the Member States. The rules and regulations governing Cohesion Policy programmes are based on a uniform shared management mode which does not take into account the costs of the delivery mechanism in different Member States. The management mode is heavy and burdensome both for the administration and enterprises as well as other beneficiaries, and it’s not proportionate to the amount of the funding received.

Only very minor modifications have been put to place to take into account the differences in the relative costs of the delivery system for the 2014 – 2020 programming period. The uniform approach to all Member States and regions fails to meet the requirement of cost effectiveness required by all EU budget expenditure. Both the principle of subsidiarity and the principle of proportionality should have a more direct effect on the governance of the Structural funds in Member States with a very limited EU-funding. Article 148 of the Common Provisions Regulation 1303/2013 on proportionate control of operational programmes allows for limited, but insufficient, reduction of administrative burden for small programmes. Therefore, an overall re-evaluation of the current method of implementation of the EU budget, as outlined in the Financial Regulation 966/2012, Article 59, should be carried out when reviewing the objectives under Article 174 TFEU in the future.

Recommendations

The Commission is recommended to carry out an overall economic impact assessment of the administrative and monitoring system of the cohesion policy delivery system in different Member States and to take action to simplify the current shared management, in particular with a view to a differentiated approach.

It is important that the Commission makes concrete proposals for simplification and the reduction of the administrative burden, including for those Member States with limited funding. Results should be available for the preparation of next programming period post 2020. The reformed Cohesion Policy should be based on a reasonable cost/benefit-ratio for all participating Member States.

One Member State does not agree with a review aimed at reducing controls on those Member states with less FEDER funds. First, regulations and procedures must be simplified for every Member State on an equal footing. Second, controls must be proportionate to the programmes and not to the different allocations to Member States.