Goldplating consequences for beneficiaries

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Example 1: Changing the eligibility of VAT after the end of the project

- At the stage of assessment of project documentation Commission considered VAT as eligible.

- 09.29.2015 issued a verdict of Court of Justice UE in accordance with the organizational unit does not meet the criterion of independence can not be considered a taxable person for VAT separately from the community (case no. C-276/14 - the City of Wroclaw against the Ministry of Finance).

- As a result of the judgment it has changed the eligibility rules for projects.

- VAT once considered eligible became ineligible **(Beneficiary load of approx. 11 million EURO).**

→**Legal certainty should be a basic rule of ESIF**

Example 2: The requirements of the application documentation

- Commission, in its document uses the term that beneficiaries should have the **Feasibility Studies**, which allows the presentation of a set of documents confirming the feasibility of the project.

- Poland during the application process for EU funding requires a document called **Feasibility Study - irrespective of the progress of the project preparation.** Such a document includes elements required in the CBA, but also those doubling the components of the technical documentation

- This principle complicates the process of applying for funds and generates additional costs for the beneficiary.

→**Attachments which duplicate informations included in other documents should not be required during the application process**

Example 3: principles of universal design

- During the implementation perspective 2014-2020, European Commission pushes to new requirements that goes beyond national legislation related to construction process.. At the same time there are no clear definitions of „universal design" defined by a respective directive of PE and of the Council („as regards the accessibility requirements fot products and services")

- Simultaneously all calls for infrastructure projects require approved technical documentation

- The introduction of new rules may require changes in construction projects , which increases:

       - the higher cost of the project,

       - the risk of extending the period of implementation of projects,

       - the risk of financial correction after the end of the project

- In extreme cases projects can be treated as ineligible

→**At this stage universal design should be an additional, not the obligatory criterion**

Example 4: Unclear role of JASPERS in the preparation of „mayor projects"

- Vague is the role of JASPERS at the stage of preparing „major projects". As in the previous financial perspective, complex projects are supported by experts of the JASPERS.
- Notwithstanding the foregoing, the Commission is going to use JASPERS / EIB experts under the IQR procedure.

→There should be a singular JASPERS assessment

Example 5: the lack of a clear interpretation of art. 7 of the Regulation no. 1301/2013

- Requirements regarding Articles. 7 are of a very general nature. It is unclear the legal status of „guidelines" that explain the principles of the implementation of the Cohesion Policy, published by the Commission (one of them concerns Article 7).

- Commission Guidelines related to art. 7 were issued too late in relation to the schedule for implementing the financial perspective 2014-2020, when the main assumptions of the functioning of a ITI had already been defined.

- Consistent interpretation prepared in a timely manner would considerably simplify the work in the implementation of the ITI. The scale of the risks associated to the potential incompatibility of the solutions adopted at the level of the Member State and Commision is undefined.

- →**Legal certainty should be a basic rule of ESIF**

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Thank You

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