

## BACKGROUND FICHE: LEGISLATION AND GUIDANCE

### 1. Structure and scope of ESIF legislation

The structure, extent and complexity of the legislative framework – as well as the role and volume of guidance – is dependent on a number of factors e.g. choice and number of targeted policy objectives, management mode, level and detail of regulated requirements, the scope and extent of controls etc.

For the 2014-2020 period, the five European Structural and Investments Funds have been put under a common regulatory and strategic umbrella while preserving a number of fund-specific provisions. Furthermore, the legislative framework is complemented by a set of 22 delegated and implementing acts (not counting legal acts relating to the control of CAP measures and an additional 17 delegated and implementing acts applicable to the EMFF), providing more detailed provisions on specific aspects, models and reporting formats. The ESI Fund policy legislative package now consists of more than 800 pages, which is a significant increase from the previous period. Stakeholders have highlighted difficulties in navigating through the different layers of legal texts and have asked the Commission numerous interpretation questions. They also draw attention to complexities resulting from additional rules established at national/regional levels.

- How could the overall structure of the legal framework for the ESI Funds be simplified, given the wide variety of policy objectives, while taking account of the different missions of the Funds?
- Are there areas or elements that are unnecessarily included in the regulations and could be dropped? Should the number of delegated and implementing acts be reduced? If so, how (ie what should they relate to)?
- To what degree and in which respect should rules established at EU level be deferred to the national/regional levels? What would be required for this to work?
- How to strike the right balance between calls for flexibility/less regulation on the one hand and calls for legal certainty/more regulation on the other? How can it be ensured that the simplified nature of the Commission's proposal for the legislative framework is maintained throughout the legislative process?
- Does the broad scope and variety of investments and available instruments contribute to complexity? Should the choice be more limited? How could synergies and complementarities between different programmes and the combination of various funding sources be further simplified?

### 2. Structure and role of guidance

The legislative framework for the 2014-2020 period is complemented by roughly 150 guidance documents (with over 5000 pages) on various topics. While some stakeholders complain about an unwarranted proliferation of guidance documents, many of these documents have been explicitly called for by Member States/regions and stakeholders, as they contribute to a better understanding and predictability of the implementation framework. They are discussed upfront in expert groups with representatives from Member States to ensure that they address pertinent issues identified and thus are considered by many stakeholders useful. However, others perceive guidance documents as an additional layer of legislation that adds to complexity. This perception is widespread, although guidance documents, by their very nature, are not legally binding and instead aim at improving the understanding of regulatory provisions and providing good practice examples.

- What should be the role of guidance documents? Should there be less guidance or more?
- What are the specific areas where guidance is considered particularly useful?
- Which are the areas where guidance has not proven to be particularly useful? Why?
- How can the usefulness and relevance of guidance be improved?
- Should the balance between regulatory provisions and guidance be reassessed? If yes, in which way? Should regulation prevent the need for guidance altogether?
- How should the Commission handle questions concerning legal interpretation and ensure transparency of answers given to a single stakeholder or Member State, taking into account that Commission endorsement is needed from now on for guidance documents that contain interpretation of EU law, including interpretation provided in the framework of implementation plans?
- Which alternative approaches could provide legal clarity and contribute to more predictability?