



23rd MEETING of the EXPERT GROUP on ESIF (EGESIF)

MINUTES

Meeting of the Expert group on European Structural and Investment Funds (E03040)

13-14 December 2016, Brussels - room Walter Hallstein, Berlaymont

Nature of the meeting

The meeting was non-public.

1. Approval of the agenda and of the minutes of previous meeting

Mr Charlie Grant of DG Regional and Urban Policy opened the meeting and welcomed the delegations and the representative of the European Parliament. Mr Grant presented the agenda of the meeting, which was accepted.

2. Border needs

Mr Grant introduced the item and gave the floor to Ms Agnès Monfret, head of the European Cross-border Co-operation Unit, and Mr Lewis Dijkstra, deputy head of the Economic Analysis Unit, who presented a study aiming at collecting solid evidence to assess the needs to be addressed by Interreg cross-border cooperation programmes. The analysis is a follow-up of the repeated requests from the European Parliament to define the allocation of Interreg cross-border cooperation programmes on the basis of actual needs, and not only pro rata population living border areas. The Commission summarised the method chosen, particularly the definitions and geographical focus retained, the selection method used and the indicators relied upon as well as the potential use of the database. The importance of establishing a set of homogeneous indicators was underlined.

The Member States welcomed the initiative. The main comments and questions concerned:

- the scope of the study: the inclusion of cross-border maritime regions, the cross-border regions between the EU and the candidate countries in the study and the overseas regions;
- the impact of the refugees' crisis and migration crisis;

- the use of other methodologies, like ESPON's;
- the way how the potential for cooperation was defined, i.e. there were some concerns that greater framework similarities between the regions rendered automatically the cooperation potential smaller;
- the definition of the 25 km buffer zone used, because some Member States pointed out other possible approaches which can be more pertinent in some cases (e.g. commuting distance, or labour market relations may depend on natural constraints or type of border);
- the reliability of the perception data;
- the opportunity to update such data.

The Commission explained that:

- the study covers the cross-border maritime regions in close proximity, within the 25 km distance buffer (defined along coastlines at max. 150 km distance from the opposite coast). In addition, the Commission confirmed that the scope of the study was EU internal borders only, therefore did not cover cross-border regions between the EU and the candidate countries. As regards the outermost regions, the Commission confirmed that they were not covered by the study, lacking similar sets of data (perception data in particular – rely heavily on the representative sample of the 2015 Eurobarometer flash survey #422 which did not cover outermost regions). The Commission took note of the request to cover them in the future;
- the impact of the refugees and migration crisis could not be assessed by the study which relies on a set of static, not evolutive data. The Commission mentioned however an on-going call for proposals to national statistical offices for cross-border data flows, including migration flows. If possible, this aspect may be covered in the future;
- ESPON's typology was not used in the study, but the Commission follows closely their work;
- regarding the similar framework conditions, the biggest potential is where Interreg cross-border cooperation can bring about the biggest changes. The similarities may mean that the cooperation potential is smaller in comparison with the cases where the framework conditions are more varied, but that does not mean that it should not be continued;
- as for the definition of the buffer zone, the Commission is aware of the fact that it may not reflect perfectly every particular case, but a common limit had to be established for the study. Expanding it to 50 km on both sides of the border would mean that the whole Belgium would have been covered by the cross-border cooperation and that would be excessive, it would dilute the concept.

- the data on perception has to be analysed together with other data and indicators and should rather be treated as a starting point for discussion;
- the Commission will strive to update the indicators used so far. The above-mentioned call to national statistical offices will test it if it is possible to have updates on an annual basis, so that those indicators can be used to feed policy strategy and to serve monitoring purposes.

In addition, the Commission informed delegations that the tool is online, and it is an Excel file which can be customised to readers' needs. As the next step, the study will be presented during the Cohesion Forum, scheduled for 26 and 27 June 2017 and it will be used in the relevant part of the Cohesion Report. The Member States may send their comments in writing to the EGESIF Secretariat.

3. Overcoming Obstacles in Border Regions: Study – Option for solutions

Mr Grant reminded delegations that the cross-border review was launched last year by the Commissioner for Regional Policy Corina Crețu against the backdrop of the 25th anniversary of Interreg (European Territorial Cooperation). The first presentation on the state of play, including the results of the public consultation, was given to EGESIF earlier this year (end-April), when it was agreed that there would be another update to the group in the second half of this year. The floor was given to Ms Nathalie Verschelde, Deputy Head of the European Cross-border Cooperation Unit in DG REGIO. The Commission explained that fifteen case studies were chosen and the study should be finished early next year. By mid-2017 a communication will be published to share the diagnosis and the stories, focusing on potential solutions to the obstacles. In their comments, the Member States referred to:

- situations when different kinds of obstacles accumulate, i.e. financial, legal and administrative, e.g. when using EIB financing across borders;
- the possibility to compare the results of the study with the ETC programmes 2014-2020.

In response, the Commission confirmed that the focus of the study was on the administrative obstacles, e.g. different rules and practices. The communication will showcase the stories where the root causes of the obstacles were identified and effectively addressed. The Commission is ready to support such processes, having a broad overview of what is happening in all Member States and being able to promote good practices, while respecting the subsidiarity principle at the same time. This type of actions could be developed in the future, post-2020 ETC programmes.

4. ESIF Annual Summary Report 2016: Lessons from the 14-15 AIR exercise (Financial Data reporting – indicators)

Mr Grant gave the floor to Mr John Walsh from the Evaluation and European Semester Unit in DG REGIO to present the lessons learned from the 2014-2015 AIR exercise. In January 2017 the Annual Summary Report will be presented by the Commission in the Structural Actions Working Party in the Council. In their reactions, the Member States touched upon:

- while it is good to have a model for AIR, the character limits sometimes do not allow to give a sufficient explanation;
- problems when importing data into the SFC, i.e. that the data has to be entered manually and cannot be imported in an automatic manner;
- the heaviness of the AIR (e.g. chapter 7 of the 2017 AIR) and the need for simplification.

In its response, the Commission made the following comments:

- The limits on the number of characters concern some certain parts and they were introduced by the relevant implementing regulation and they are accordingly hard-wired in the SFC. The Commission encourages the Member State to provide synthetic explanations.
- There is SFC2014 Helpdesk which provides support in establishing connections with the national reporting system.
- The Commission is aware of the delays in 2016 with some chapters of the AIR on financial instruments and Interreg. Those teething problems with the first reporting cycle are now overcome.

In addition, on the margin of this discussion there was a question regarding the guidance note on the leverage effect, i.e. when the final version should be expected. The Commission replied that it is being finalised, but due to the changing procedures in the Commission, there are some delays. The GN on Reporting on FIs (Art 46 CPR) and on Leverage Effect (Art. 37(2)(c) CPR) are expected to be finalised in the first months of 2017.

5. ESI Funds Open Data Platform Update

Mr John Walsh made a presentation on the Open Data Platform and the planned changes to be launched with the 2016 Annual Summary Report on 20 December 2016. Please see the links below to the platform and a video tutorial for the ESI Funds Open Data platform:

<https://cohesiondata.ec.europa.eu/>

<https://www.youtube.com/watch?v=tK9nYjuMrBM>

A suggestion to translate the platform into French was noted.

6. Q&A on e-Cohesion

Mr Grant informed delegations that the Q&A document on e-Cohesion consolidates the most frequent questions and answers related to e-Cohesion for the 2014-2020 programming period. The purpose of this document is not to provide new guidance but to make available a quick reference sheet to the recurrent questions raised by Member States on this subject. It is addressed to managing authorities, intermediate bodies, certifying authorities and audit Authorities responsible for programmes co-financed by the ERDF, the Cohesion Fund and the ESF. The Commission intends to publish this document early January. The translations in all EU languages will follow this publication. Next, the floor was given to Mr Frank Sébert, Audit Director in DG REGIO; head of unit Mr Rafael Lopez Sanchez, as well as Mr Paulo Loureiro from the Audit Unit to present the document.

The main comments and questions of the Member States concerned the following issues:

- On question 4.4 and size restrictions on the files, especially when a Member State has its own restrictions, e.g. 30 MB per file. On question 5.4, if there are national obligations for interoperability, they could be mentioned here.
- On question 6.1, it was suggested that providing electronic documents for all expenditure items should only be a recommendation, not an obligation.
- On the Commission's plans to allow for an automatic exchange of data between the national system and the SFC.

The Commission replies were as follows:

- On question 4.4, defining any limit might impose more costs than necessary and would be too restrictive. Similarly for question 5.4, the Commission is open to mention that possibility, but it does not want to create an impression that having such national requirements should be applied widely.
- On question 6.1, the Commission confirmed that this is a recommendation and it can be made clearer if necessary.
- The Commission continually develops possibilities to transmit data from the Member States' national systems into the SFC without manual encoding. At the moment, it is working for payment forecasts and payment applications. For other parts this option will be rolled out gradually. The maximum size limitation of files has been increased to 1 GB and specifications are available on the SFC portal. Questions can be addressed to "EC SFC2014 WS" (EC-SFC2014-WS@ec.europa.eu).

And finally the Commission welcomed any written comments from the Member States until 28 December. The Commission intends to finalise the Q&A in January 2017.

7. Guidance on Sampling

Mr Grant explained that the COCOF guidance on sampling methods for the previous programming period was updated in order to adapt it to the relevant provisions applicable to the 2014-2020. Moreover, based on audit authorities' requests, the updated guidance provides more examples on practical implementation of sampling methods. This document was discussed in the technical meetings with audit authorities during 2015 and 2016, therefore the Commission considers that the current version of the guidance is final and intends to publish it in early January. The translations in all EU languages will follow this publication. The floor was given to Mr Franck Sébert, Director of the Audit Directorate, and Ms Barbara Korczak from the audit coordination unit of DG REGIO, who presented the guidance.

The Member States comments covered mostly ETC-related issues, i.e.:

- Some specific cases when sampling results in disproportionate costs, for example in the ESPON programme. The importance of the single audit principle was underlined and a proposal to change Article 148 CPR during the Omnibus negotiations was recalled.
- Another concern for ETC referred to a situation when extrapolation can result in disproportionate financial corrections.

The Commission's response was as follows:

- Regarding the ETC sampling issues, the Commission organised a specific workshop with a group of audit authorities in January 2016, which resulted in clarifications introduced in the guidance. Regarding Article 148 CPR, while it is an important step towards simplifying the system for the beneficiaries, it brings difficulties in its practical application, namely on sampling; the guidance includes a section where the technical matters are addressed, taking into account of the limitations imposed by Article 148 CPR.
- The Commission is convinced that the revised guidance will mitigate the ETC sampling issues, mainly because it is more detailed and it offers a broader range of sampling unit options for the ETC programmes. The Member States may now make a better choice among these options. Where applicable, the programme authorities should determine how financial corrections should be applied, assessing in particular what part of programme is affected by the error rate detected by the audit authorities and fixing systemic deficiencies. The error rate is to be extrapolated to the expenditure declared, even when using a non-statistical sampling.
- The Commission will continue the dialogue with the Member States and technical workshops will continue to be organised.

8. Explanatory note on the application of State Aid Rules to national and regional funding schemes that offer alternative support to SME Instrument project proposals with a Horizon 2020 'Seal of Excellence'

Mr Grant informed delegations that The Seal of Excellence initiative had previously been presented to the EGESIF in July 2015, and the relevant Ministers and Permanent Representatives had been informed about it in a joint letter by Commissioners Crețu and Moedas in October 2015. The explanatory note responds to the request of the Council, the EP resolution on 'Cohesion Policy and Research and Innovation Strategies for smart specialisation'. The purpose of the note is to explain in simple terms and in full respect of the General Block Exemption Regulation how to set up public support schemes in a way that they can provide funding to outstanding SME innovation project proposals under the Horizon 2020 SME Instrument scheme that were awarded a "Seal of Excellence" without having to file a State aid notification. During inter-service consultation the scope of the note was expanded, so instead of only the ERDF it now covers basically all ESI Funds. The floor was given to Ms Katja Reppel, Deputy Head of the DG REGIO Competence Centre for Smart and Sustainable Growth, to Ms Magda de Carli, Deputy Head of the DG RTD unit for "Spreading Excellence and Widening Participation" and to Mr Paolo Cesarini, Head of the DG COMP unit "Access to Finance, R&D&I and Environment" to present the document.

A number of Member States shared the view that it should be possible to grant in an easy, automatic manner the same level of support from the ESI Funds as the project would receive from Horizon 2020. This would constitute a real incentive for the project promoters who were given the Seal of Excellence to apply for the ESI Funds' support. In addition, there were the following questions:

- Regarding phase 1, if de minimis is chosen, what is the maximum co-financing rate?
- Is there a choice between de minimis and GBER?
- What happens if the project is not totally in line with the ESI Funds selection criteria – should the operational programme be amended accordingly?
- Is there any information on how the 14 schemes are running?
- What should be checked by the managing authority of an operational programme? The readiness of the project?
- When will the note be finalised?

The Commission referred to these questions in its replies:

- With regard to the automatic transition from the H2020 rules to ESI Funds in order to have the same SA intensity, the Commission explained that the explanatory note goes as far as it can. It is impossible to use the same State aid rules which apply to the EU instruments

when the project is supported by the Member States. There are legal constraints which have to be respected, i.e. the case law. However, the bonuses apply automatically.

- In case of de minimis, it is not SA intensity but flat rate which is set up at 200 000 EUR over three years.
- It is up to the Member State to choose between de minimis and GBER, but in the Commission's opinion, de minimis is the easiest way.
- The burden of assessing the project was taken off the shoulders of the MA. The only thing that the MA has to do is to recalculate the support. It is possible to go above 50-60% of the eligible costs.
- As regards reprogramming, the Commission considers that as long as the operational programme includes ERDF support for SME innovations, there should be no need for amending the programme in order to cover the projects which received the Seal of Excellence. What may require amendments are the selection criteria, but these are adopted by the monitoring committee and do not require Commission acceptance.
- Regarding the current state of play, in Spain in phase 1 the authorities decided to re-evaluate the projects, because they plan to give more support than was available in Horizon 2020. Some other Member States decided to use the de minimis flat rate. For phase 2, in Italy the project proposals will not be re-evaluated.
- The note should be finalised in the coming days.

Mr Grant invited the Member States to disseminate the explanatory note to all relevant managing authorities and implementing bodies and other national funding bodies. He also highlighted the possibility for the managing authorities and implementing bodies to join the Community of Practice. Any further questions can be submitted either through the EGESIF Secretariat or directly to Ms Reppel and Ms de Carli.

9. Co-Financing of Cohesion Policy programmes 2007-2013 and 2014-2020

Mr Grant explained that the Commission was invited by the Council in the Council Conclusions of 15 March on the Article 16 Report to analyse co-financing in cohesion policy programmes. As a response to this request, a short presentation was given by Ms Maria Sioliou of the Better Implementation Unit, DG REGIO.

Few Member States asked if the presentation could be done in the Structural Actions Working Party (SAWP) in the Council and if the Commission plans to publish a full report. In response, the Commission explained that the EGESIF was selected for the presentation of the topic because it is the forum responsible for dealing with implementation issues. This was indicated when the request was made in the Council working group and no objection was made. The Commission explained

that there are no plans to present it in the SAWP, but noted the request from some of the delegations.

10. Results of the Simplification Study

In his introduction, Mr Grant informed delegations about the background to the Simplification Study under preparation. He explained that the study had three main objectives: 1) to map how simplification options were taken up by 2014-2020 programmes and to assess the impact of the changes in the delivery mechanisms and administrative burden; 2) to assess in monetary terms the scope of reduction of administrative burden; and 3) to look at the creation of additional burden and costs resulting from national/regional rules (gold plating). He then gave the floor to Mr Peter Berkowitz, Head of Unit of "Policy Development, Strategic Management and Relations with the Council" to present the main results of the study.

The Member State interventions focused mostly on the topic of gold plating, and the fact that it is not exclusively a Member State issue. It is often the result of the lack of trust and communication among authorities and/or the Commission, or the excessive requirements from the ESIF framework. One delegation asked about the status of the other studies in the REGIO study programme.

In its response, the Commission explained that the Simplification Study aimed to identify where the difficulties are and how they can be avoided in the future. The Commission agrees that gold plating is a shared problem linked to the implementation of the policy – but it is also evident that there are national practices that may lead to increased gold plating. It is one of the conclusions of the study that there are different approaches across Member States – leading to different administrative burdens for beneficiaries for the same type of activity. Regarding other studies, the Commission advised that those will probably be available around May-June 2017.

11. Update on the work of the HLG on simplification for beneficiaries of ESI Fund

Mr Grant reminded Member States that since briefing on the work of the High Level Group the last time, a lot had happened. The group had adopted 3 reports on specific issues (financial instruments, access of SMEs to financing, and most recently gold plating). The Commission had adopted the "Omnibus" regulation, which takes on board a lot of the HLG legislative recommendations. The Commission also tried to address the non-legislative recommendations of the HLG and discussed cross-cutting audit issues. He then gave the floor to Mr Krzysztof Kasprzyk of DG REGIO's Better Implementation Unit, who summarised the main conclusions of the group and updated delegations about the work plan for the next months, already focusing on post-2020 issues.

The Member States' interventions revolved mainly around the following topics:

- Regarding access to finance for SMEs, more overlaps between the ESIF and Horizon 2020 state aid rules as well as simplified cost options would be beneficial;
- Regarding financial instruments, the conclusions and recommendations of the HLG were advised to be translated into regulatory proposals. Broader discussion in the EGESIF of issues related to financial instruments would also be considered useful;
- Regarding gold plating, the recommendations of the HLG were welcomed. Audit requirements at EU and national level, the inflexible programming system, as well as the lack of timely, clear guidance were also mentioned as potential causes of gold plating;
- Regarding audits, it was mentioned that the tolerable error rate could be reviewed (raised) for certain types of programmes, and that the audit approach could be changed. Concerns were also raised about Article 27(2)(a) of delegated regulation 480/2014 which, according to some delegations, may imply retroactivity ("applicable at the time of the audit") and therefore an amendment to the regulation would be necessary.

In its response, the Commission stated that the drafting of the referred delegated act does not imply retroactivity. The text needs to be read in its entirety¹, and was introduced to protect beneficiaries from being audited against objectives that are for a time after the date of the audit. Thus there is no intention to amend the delegated act at this stage.

12. AOB

With reference to point 6 "Information Note on the clearing of annual pre-financing in the accounts" of the previous, 22nd meeting of the EGESIF in September 2016, Mr Grant explained that the note was finalised and sent to Member States as an official letter via the Permanent Representations. Next, he gave the floor to Mr Philippe Jouret, Head of the Budget and Financial Management Unit and Mr Jan Cnockaert from the same unit to provide a detailed explanation. In response to the Member States' questions, the Commission confirmed that it intends to implement for all the programmes automatically the offsetting of the recoveries resulting from the examination and acceptance of accounts against the annual pre-financing. However, if a Member State would prefer two separate flows of cash, they are invited to communicate their position by letter to the Commission at the latest by 15 February 2017. It was also confirmed that there is no impact of the off-setting of the annual pre-financing on the n+3 targets in the context of the automatic decommitment.

¹ "Audits of operations shall be carried out on the basis of supporting documents constituting the audit trail and shall verify the legality and regularity of expenditure declared to the Commission, including the following aspects: (a) that the operation was selected in accordance with the selection criteria for the operational programme, was not physically completed or fully implemented before the beneficiary submitted the application for funding under the operational programme, has been implemented in accordance with the approval decision and fulfilled any conditions applicable at the time of the audit concerning its functionality, use, and objectives to be attained."

Mr Grant also informed Member States about the planning of next year's EGESIF work programme. He advised that delegations should send their proposals for any topics they wish to include in the work programme in 2017 until 12 January. After that, the annual work programme would be consolidated and distributed through the mailing list.

Next meeting

Due to the continuing work on the elaboration of the 2017 annual work programme, the date of the next meeting was yet unknown.

List of participants

Attached.