

**4<sup>th</sup> MEETING of the High Level Expert Group  
on Monitoring Simplification for Beneficiaries of ESI Funds**

**21 June 2016**

**Note and Actions Points**

**1. Opening remarks from Chairperson**

The Chairperson opened the meeting and noted that all the members of the high level group were present.

Before starting the main work of the meeting, the Chairperson mentioned the organisation of the group going forward. He asked Nicholas Martyn, Deputy Director-General for Regional and Urban Policy, to give up an on the state of play on the mid-term review of the Multiannual Financial Framework for 2014-2020.

Mr Martyn advised that preparations within the Commission for the review were ongoing. While decisions on the exact content and timeframe of the mid-term review had yet to be taken, expected simplification and performance to be key themes in this exercise. This was also in line with the Budget focused on results initiative, in the context of which simplification, the reduction of administrative burden and performance were key topics to be addressed. He noted that the work of the high level group would make a key contribution to these processes. The Commission followed closely the conclusions and recommendations from the group, particularly in the area of simplified cost options and financial instruments. Their deliberations and findings would feed into the discussions and reflections within the Commission and thus make an important contribution to shaping the debate.

The Chairperson reassured members that the work of the group was progressing well and that the Secretariat would work with members to agree recommendation as soon as possible after the meeting so that by September they would have produced interim reports that cover all 5 topics discussed. These were substantial topics which had the potential to make a real impact on simplification for beneficiaries and on which the group would have communicated clearly their views to the Commission in advance of their proposal on the mid-term review of the Multiannual Financial Framework.

He then gave the floor to the Commission to give their feedback to the conclusions and recommendations on e-Governance and simplified costs as agreed at the previous meeting

Mr Martyn welcomed the high level group's recommendations for e-Governance, recognising the important impact electronic systems can have on reducing administrative burden for beneficiaries and its crucial role in driving simplification. The recommendations for post 2020 would feed into the Commission's reflection on the post 2020 period and complement the results of the study on simplification.

For those recommendations for the current period, he stated that the Commission had already started the dissemination of good practice examples on e-Governance via the Simplify ESIF platform, experts meetings and conferences. He informed members of the high level group that the Welsh model would be presented at the EMFF experts meeting in June and that the Commission was organising a workshop on the topic during the European Week of Regions and Cities in October.

One of the recommendations was to ensure that technical assistance from the EAFRD could be used for supporting the implementation of e-Governance: Mr Martyn clarified that the

Commission did not consider it to be excluded and would make sure this was clear in its communication with the programme authorities.

Similarly, the Commission would ensure that the question and answer document for Member States on e-Cohesion was updated to clarify the rules on accepting and archiving of electronic documents and on electronic signatures. The Commission was considering providing some further clarifications in the legislation if needed.

Furthermore, Mr Martyn explained that the Commission was actively promoting the "once only" principle and included it in regular presentations on e-Governance for the national authorities. The Commission would also promote this principle through the Member State expert groups.

Francisco Merchan Cantos, Director in the Directorate-General for Employment, Social Affairs and Inclusion, welcomed the high level group's recommendations for simplified costs. Simplified costs were considered to be key tools for reducing administrative burden and ensuring a result-focused budget. Mr Merchan Cantos assured the members of the group that the Commission would continue to provide ex-ante support during the set-up and design of simplified costs and closely co-operate with all programme authorities. The Commission had already held workshops in a large number of Member States and published detailed guidance on simplified costs. He added that DG Employment, Social Affairs and Inclusion is finalising works on another 6 proposals for delegated acts under the European Social Fund regulation before the summer break. While this process may take some time, the ultimate goal of having a delegated act in place required a diligent assessment by the Commission, but also depended on the proposal submitted by the Member State. Due to the heterogeneity of interventions under the ERDF, the delegated acts approach was not included in the ERDF Regulation; however, the Commission was assessing the possibilities to provide more assurance ex-ante to Member States when setting up simplified costs methodologies for ERDF projects, similar to the comfort letters provided in the previous programming period.

With regard to the exchange of good practices, Mr Merchan Cantos explained that the Commission fully agreed that Member States could learn from each other and the Commission had started to discuss in the ESI Funds expert group (EGESIF) the dissemination of good practices. The ESF Transnational Network on Cooperation for Simplification, which now has 17 participating member states, had a mandate to address precisely the question of sharing experience. For the EAFRD, the European Network for Rural Development (ENRD) was already exploring and promoting standard simplified costs models.

Regarding the proposal to set up an "audit committee" at the national or regional level, the Commission saw value in any initiative to increase cooperation at national level between the various authorities involved in setting up simplified costs. Mr Merchan Cantos stressed that the Audit Authorities played a fundamental role in developing simplified costs. Concerning State aid, the Commission services had definitively agreed on the compatibility between State aid rules and the use of simplified costs. The amount of simplified costs could be used to verify compliance with State aid rules, even where those amounts were based on flat rates taken from the regulations. The Commission was finalising a question and answer document which would then be communicated to the Member States to clarify these points.

Finally, Mr Merchan Cantos explained to the members of the high level group that the Commission certainly agreed with the call for more off-the-shelf options. These would require legislative changes for most of the funds. Under the provision of Article 14.1 of the ESF regulation, there was the possibility to define simplified costs at the EU level that could then be taken over and used by any Member State without the need for justification of those

amounts. The Transnational Network on Cooperation for Simplification was currently exploring this field.

The Chairperson thanked the Commission for their interventions and added that he looked forward to seeing the recommendations of the high level group being reflected in any proposals coming from the Commission.

## **2. Review of draft conclusions and recommendations on Access to EU Funding for Small and Medium Enterprises (SMEs) and on Financial Instruments (FIs)**

The Chairperson introduced the agenda item and noted that the members had already had an opportunity to comment on the draft conclusions and recommendations for these topics.

He asked Massimo Sabatini as rapporteur to present the draft conclusions and recommendations on access to EU funds for SMEs. Mr Sabatini said that the main messages to be conveyed in the recommendations were the importance of overcoming the barriers for this particular group of beneficiaries because of the potential they represented for generating growth and jobs in Europe, the need to foster an SME-centric through the Small Business Act approach and the stakeholders' involvement; and a reinforced co-ordination within the Commission in the current period to ensure clear and stable rules were established before implementation and also to promote harmonisation with State Aid rules.

The comments from the members acknowledged the need to take into account the heterogeneity of enterprises at the EU level, including the not for profit and craftsmen, that intermediate bodies could play a role in assisting SMEs but that this should be optional, and stressed the principle of non-retroactivity.

The Chairperson asked Pawel Choraży to present the recommendations on financial instruments. Mr Choraży addressed some of the suggested amendments made in writing by the members and clarified the intention behind some the conclusions and recommendations. There was a discussion amongst the members on the positive impact auditors could have on verifying the correct application of financial instruments. but equally the importance of auditors' independence and their complementary role to decision-making was also recognised.

The issue of subsidiarity was discussed in relation to both sets of recommendation. The Chairperson concluded that this was an issue that should be taken up further in the context of the discussion on gold plating.

The group adopted the texts in principle subject to some minor drafting changes. The Chairperson asked the Secretariat to make the necessary changes and send to the final versions to the members after the meeting.

## **3. Presentation by the Commission on the interim results of the study on simplification, followed by an exchange of views with members of the high level group on the main issues to be addressed by the high level group in the short term**

Peter Berkowitz, from DG Regional and Urban Policy, presented the preliminary results of the study on simplification being carried out on behalf of the Commission. Mr Berkowitz pointed out to the members of the group that one of the methodological challenges in conducting this study was the reluctance of certain member states to provide data. He explained that an additional exercise was underway with Member States to compliment the information provided as part of the original survey on the planned uptake of simplified costs. The members of the high level group were concerned by the low response rate and strongly

supported the additional exercise emphasising the importance of having good quality information from the Member States to inform this study.

The members of the high level group welcomed Mr Berkowitz's presentation and discussed some of the key findings. Some members pointed out that simplified costs needed to reflect the reality on the ground for beneficiaries and referenced a survey of ETC programmes which had also been provided by one of the members. A proposal to simplify the INTERREG programmes was circulated to the members of the group. They noted that the cost of managing cohesion policy programmes was comparable to other policies and thought it was important to recognise this point.

Mr Berkowitz explained that the programme management costs included management verifications and that simplified costs had the potential to address this as the management verifications would be reduced. The members were in favour of greater transparency and comparison between the member states to motivate those lagging behind. Mr Berkowitz was in favour of being more open but explained that some member states would not welcome this approach.

The members discussed the purpose of the refit platform as a tool for stakeholders to suggest streamlining of EU legislation. The Secretariat explained that they were working closely with the Secretariat of the REFIT platform to ensure a joined up approach on submissions relating to the ESI Funds. The submissions received so far on ESI Funds via REFIT had been provided to the members of the group as background documents and it was intended to have an agenda item at the next meeting to discuss them as well as any relevant opinions coming from the platform in more detail. It was also suggested that given the multiple studies which have been conducted, it would be useful to centralise and analyse all the results to establish the potential impact.

The Chairperson thanked Mr Berkowitz for his presentation and asked him to come back with the final results of the study to the group's meeting in November 2016.

#### **4. Presentation by the rapporteurs for "gold-plating", Anna Lisa Boni and Pawel Choraży, followed by an exchange of views with the members of the high level group**

The Chairperson introduced the item by reminding the group that at their first meeting the representatives of both the European institutions and stakeholders said that the issue of layers of rules and requirements was one of the most significant in creating barriers for beneficiaries and dissuading them from accessing the funds. He added that there was a cycle of blame between the European, national, regional and local levels of administration regarding the causes of this so called gold-plating and the aim was to understand better why it happened and what could be done to minimise the need for it. He gave the floor to the joint rapporteurs for the topic, Anna Lisa Boni and Pawel Choraży.

The report and presentation on gold-plating by the rapporteurs focused on five areas:

- Management and control system (audit)
- Link between Cohesion policy and State aid policy
- Primary and secondary regulations (timetable, size/detail, real need)
- Public procurement
- Monitoring and evaluation

The rapporteurs stressed the importance of making the distinction between national and regional rules that reflected subsidiarity and gold-plating which was the unnecessary addition of rules. They explained the complex articulation between the EU and national regulations

which with the addition of some national and traditional ways of working have generated bottlenecks and blockages. The issue should be examined at all levels of implementation, not just national and regional but also at the level of the EU and the beneficiaries who often took actions to protect themselves. They considered that gold-plating had its roots in who was the decision maker explaining that in many cases the auditors adopted the role of decision maker by not simply judging if it was compliant or not but going further in saying what should be done. It was a source of frustration with some authorities that one type of error required a new rule to prevent it occurring in the future which was often disproportionate to the likelihood of it occurring again.

They highlighted the difficulties around state aid and suggested better coordination within the Commission including the harmonisation of the rules for shared management and direct management as well as the possibility for the Commission decision approving a programme to also act as the decision on State aid rules for that particular programme.

The members of the group welcomed the report which they considered to have addressed all the key issues on the topic. The main comments from the members focused on the two principles of subsidiarity and proportionality. Underlining the need to have better quality EU legislation, they stressed that all national and regional rules were not to be considered as gold-plating and therefore negatively. They emphasised the need for programme authorities to look critically at the processes they have in place and ensure that they were not adding unnecessary layers and the national auditors could have a role in identify redundant or duplicate processes. They also discussed how a balance could be achieved between providing guidance to member states and reducing the amount of secondary legislation by taking a flexible approach and allowing more reliance on national systems and administrations in line with the principles of shared management and subsidiarity. The Chairperson concluded that the members were in favour of increasing flexibility in recognising subsidiarity, but were against the adding of unnecessary rules.

## **5. Evidence gathering session with stakeholders, followed by questions from the high level group**

The Chairperson welcomed to the meeting the experts in the field of access gold-plating to give their perspective of the causes, challenges and possible solutions.. The panel members were:

- Maciej Fijałkowski, Director of the Office of European Funds and Economic Development, Municipal Office of the Capital City of Warsaw.
- Thorsten Kohlischm Head of the Joint Secretariat, South Baltic Programme.
- Gearoid O'Keeffe, Department of Public Expenditure Reform, Ireland.
- Angelika Poth-Moegele, Executive Director for European Affairs, CCRE-CEMR, Council of European Municipalities and Regions.
- Luk Zelderloo, Secretary General, EASPD.
- Pekka Pesonen, Secretary General of Copa and Cogeca.

By giving concrete examples of the implementation of the ESI Funds on the ground, the stakeholders explained to the members of the high level group the causes of gold-plating. The main comments made by the stakeholders were:

- The lack of coherence in the interpretation answers from different parts of the Commission caused confusion as did the gaps that still existed in the harmonisation of the rules across all the ESI Funds.

- Fear of not complying with State aid regulation led local authorities to impose additional requirements and in the process time and resources were not used efficiently. It was suggested that State aid rules could be relaxed for small projects as they have a negligible impact on the single market.
- Different approaches between the EU and national level on public procurement policy added to the complexity with EU requirements focusing on transparency but national rules focusing on value for money.
- In the context of cooperation programmes, different administrative cultures between countries could lead to gold-plating and the high level group should not exclusively focus on helping beneficiaries of the funds, but also other parties involved. For example some administrations tended to plan for every eventuality (in other words were completely risk averse) while other national systems were based more on trust working more closely with beneficiaries and attend events organised by them not in the spirit of controlling but as partners.
- The principle of proportionality should be strengthened especially when it came to the coordination of audits. They suggested that the date of approval of a programme should be the date defining the laws that apply to that programme and hence, to the auditing rules. There should not be a retroactive effect of new interpretations of the rules,
- The focus needed to return to the objectives of the policy and that should be kept in mind when thinking of simplification.

The Chairperson thanked the stakeholders for their input to the discussion on gold-plating and advised that their presentations would be made available on the website of the high level group.

## **6. Summary discussion and initial conclusions from the rapporteurs**

The Chairperson invited the rapporteurs to draw some initial conclusions from the discussions and evidence presented. The rapporteurs concluded that gold-plating could be tackled by creating deterrents to gold-plating such as compulsory impact assessments for national authorities wanted to introduce requirements more restrictive than those in the EU level regulations, by making it clear that guidelines should not be mandatory or the basis of an adverse audit opinion or the introduction of EU level eligibility rules rather than national rules such as the delegated act on eligibility for ETC programmes.

However, in the longer term the idea of moving towards a framework rather than a set of rules at EU level would mean that more responsibility for the management and control would lie with the Member State, especially for smaller and softer investments. The legality and regularity issues could be taken care of by national authorities and Commission would only look at the results of the investment.

The Chairperson asked the Secretariat and the rapporteurs to prepare a first draft of the conclusions and recommendation before the summer break for comments in writing from the members. He asked that the work be progressed as far as possible by written procedure so that the recommendations could be endorsed in September.

## **7. Any other business and close of meeting**

The members debated whether they should prepare a document to highlight their main recommendations to the Commission in the context of mid-term review of the Multiannual

Financial Framework for 2014-2020. The Chairperson said that the conclusions and recommendations for each topic were in fact interim reports but he would consider further if a summary of the main messages could be produced for after the summer break. As there was no further business, the Chairperson closed the meeting.