



EUROPEAN COMMISSION

<b>22<sup>nd</sup> MEETING of the EXPERT GROUP on ESIF (EGESIF)</b>
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**21 September 2016 (10:00 – 18:00)**

Albert Borschette Conference Center, room CCAB 2A - Rue Froissart n°36, 1040 Brussels

## **MINUTES**

Mr Moray Gilland of DG Regional and Urban Policy opened the meeting and welcomed the delegations and the representative of the European Parliament.

He explained that due to the reorganisation within DG Regional and Urban Policy his role as a chair of the EGESIF would be taken over by Mr Charlie Grant from the next meeting onwards.

### **1. Draft Agenda**

Mr Gilland presented the agenda of the meeting. The agenda was accepted, with one Member State proposing an item to be discussed under Any Other Business.

Mr Gilland gave a state-of-play update on guidance notes. He indicated that since the previous meeting in April, the guidance notes on Categories of Intervention and Climate Change Tracking, Ensuring Respect for the Charter of Fundamental Rights, and the Selection of Bodies Implementing Financial Instruments had been finalised. Responding to a Member State question he explained that the latter two were adopted as Commission decisions since during their discussion the Commission had been advised that they set out interpretation of legislation and thus required endorsement from the College of Commissioners. Mr Gilland stated that the outstanding guidance notes on financial instruments were foreseen to be finalised by the end of 2016 without any additional rounds of debate in the EGESIF. The guidance note on Sampling was also to be finalised by the end of the year, and would be presented at one of the upcoming meetings of the expert group.

## **2. A study on EU Competency framework for the management and implementation of the ERDF and CF**

Mr Gilland introduced the item and gave the floor to Mr Pascal Boijmans, Head of Competence Centre and Administrative Capacity Building in DG Regional and Urban Policy, who informed experts about the main activities of the Unit in charge of the initiative. Ann-Kerstin Myleus of DG Regional and Urban policy gave a presentation about the Study on the EU Competency framework for the management and implementation of the ERDF and CF. She introduced in detail the four deliverables of the study. She emphasised that the self-assessment tool, a main deliverable, was able to identify competency gaps both at individual and institutional level, and would be transferred to a web-based tool before wider dissemination. The tool would be optional and the Commission would not possess or use the data entered in the tool. Before finalisation a pilot implementation was to be launched with the free participation of a few Member State administrations. She asked the experts to communicate their suggestions regarding any administrations willing to take part by 3 October 2016.

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

- Recommendations or limitations regarding the authorities potentially participating in the pilot phase.
- That the domains of state aid and public procurement should also be covered by the blueprints for training courses.
- Whether there are plans to extend the tool to the ESF.
- The availability of the annexes to the study and the web-based tool.

The Commission clarified that:

- Administrations for one specific programme should be nominated (e.g. MA for programme X).
- The overview of trainings presented in the study is not exhaustive; only some key ones are identified. Public procurement and state aid will also be covered. In addition, there are also other tools such as guidance notes and trainings organised by the Commission on these subjects that Member States may make use of.

- There are no concrete plans as of yet to extend the tool to the ESF, which is up to DG Employment, Social Affairs and Inclusion to decide. For now what is most important is to conclude first step and arrive at a proper working version of the tool, while further steps could be discussed in the future.
- The annexes were uploaded to the CIRCABC EGESIF Library. The web-based tool will be available by the end of the year.

Mr Gilland concluded the item by highlighting the importance of administrative capacity in the management of EU funds. He encouraged Member States' experts to indicate to the EGESIF Secretariat by 3 October close of business any proposal for administrations interested in participating in the pilot phase of the Competency Framework.

### **3. Major Projects**

Mr Gilland stated in his introduction that the timing of major project submissions is behind schedule and possible ways to address the situation need to be discussed. He then gave the floor to Mr Jonathan Denness and Mr Witold Willak from the Competence Centre of Closure and Major Projects in DG Regional and Urban Policy, who provided an update on the system and status of major projects in the 2014-2020 period and outlined recommended actions for Member States. In this regard, Mr Denness and Mr Willak emphasised particularly the importance of: monitoring in a reliable manner the preparation and implementation of major projects; keeping the list of major projects of the OP updated; developing a sufficient project pipeline; identifying all bottlenecks of preparation and implementation; maximising the use of the JASPERS initiative as early as possible; the decision on which procedure to use for the submission of a major project – underlining the advantages for the Member State of using the IQR option; and double-checking the quality of information in the application or notification before submission to the Commission.

The limited number of interventions from delegations related to positive experiences with JASPERS and technical clarifications of the information provided in the presentation.

In conclusion, Mr Gilland reiterated that the delay in major project submissions should be addressed as a priority as it has great influence on programme implementation and on how cohesion policy is perceived. He encouraged Member States to identify bottlenecks and

problematic areas and consult the Commission for help if necessary. He also asked Member States to regularly update the list of major projects in their programmes.

#### **4. Results of DG REGIO Studies on 2014-2020 period**

Mr Gilland reminded delegations that in 2014, as a part of the DG Regional and Urban Policy study programme, a first series of four studies had been launched to assess the integration of elements of the reformed cohesion policy in the programming exercise for the 2014-2020 period. Members of the EGESIF received regular updates about the progress of the studies whose conclusions would also feed into the process of discussing and planning post-2020 cohesion policy. The final reports for studies on Ex-ante conditionalities, Partnership principle, Performance framework and "new provisions" (covering a range of new programming elements, such as assessment of administrative burden for beneficiaries and planned actions for reduction, horizontal principles, territorial approaches, etc.) as well as of a study assessing the effects of thresholds and limits in the CPR had been completed and uploaded to the InfoRegio website.

Mr Peter Berkowitz, Head of Policy Development, Strategic Management and Relations with the Council from DG Regional and Urban Policy presented the key findings of the studies and thanked Member States for providing sufficient input. He added that further studies were under preparation which would be completed by the end of the year and during 2017.

The Member States generally welcomed the results presented. The main issues raised in the discussion were as follows:

- Although ex-ante conditionalities are vital to the effectiveness of implementation, their present compliance mechanism also causes burden and could be improved.
- The possibility to review the performance framework, e.g. to use positive incentives rather than sanctions.
- Regarding the data presented in relation to the study on thresholds, the possibility of moving away from a large number of small projects towards fewer more substantial projects to reduce risks of error.
- Whether any conclusions on the designation procedure as one of the new provisions could be provided.

In its response, the Commission made the following comments:

- The purpose of the studies was to have a photograph of how these provisions functioned, worked well or not. Reflection on whether there are ways of simplifying processes or if other elements have to be changed for instance in the system of ex-ante conditionalities is necessary, but that will be relevant during the discussion on the future of the policy.
- The same can be stated for the performance framework. The message of the study is that Member States took the exercise seriously and it improved the programmes. We now have to see how it works in practice. Possible changes are again for the discussion on the future.
- Decision on the size of operations will always be up to the Member States. The study on thresholds however could provide evidence base in relation, e.g., proportionate controls.
- The study on new provisions was undertaken until mid-2015, and no designation by that date had taken place. The slowness of the procedure was unanticipated and needs to be discussed and understood as it has considerable impact on absorption.

## **5. Sharing of expertise and best practice in implementing SCOs in the member states**

The point was chaired by Mr Loris di Pietrantonio, Head of ESF and FEAD Policy and Legislation Unit from DG Employment, Social Affairs and Inclusion. He introduced the three forthcoming presentations focusing on how simplified costs options (SCOs) were implemented in the Canary Islands (Spain), Northern Ireland (United Kingdom) and in Italy as well as on how the encountered problems were addressed.

**The first presentation** concerned the EAFRD and was given by Ms Carla Alvarez de Vera, representing the Regional Ministry of Agriculture, Livestock, Fisheries and Water of the Canary Islands Government. She explained that in the Rural Development Programme Canary Islands 2014-2020 three types of SCO are used:

- Standard scales of unit costs, in line with Art. 67(1)(b) CPR – for staff costs, in line with Art 68(2) CPR, where the annual gross staff cost was based on collective labour agreements; for investment as well, and here it will be necessary to update the methodology to cover new types of investments;

- Lump sums, in line with Art. 67(1)(c) CPR – for animation costs;
- Flat rates in line with Art. 67(1)(d) CPR – for indirect staff costs (based on Art. 68(1)(b) CPR), training and cooperation.

Ms Alvarez de Vera added that it was the first time that SCOs were applied by the authority and the main lesson learnt was that elaboration of a valid methodology takes a lot of time. 25% of the programme is covered by SCOs. The simplification achieved is significant, because in case of agricultural holdings, 50% of work time is saved mostly as a result to SCOs. She also replied to some question from the Member States' experts:

- As regards the reaction of farmers to the introduction of SCOs for investments, Ms Alvarez de Vera said that farmers were satisfied and most of the investments were covered by SCOs. The authority had spent a year studying the investments.
- As regards public procurement rules, Ms Alvarez de Vera stated that it was difficult to comply with them. She questioned the need for public procurement rules given that according to Article 62(2) of the EAFRD Regulation<sup>1</sup> an independent body needs to confirm the adequacy and accuracy of the calculations.
- Ms Alvarez de Vera also confirmed that they had involved the audit authority right from the start of works on the SCOs, and that the Guidance Note<sup>2</sup> of the Commission was particularly useful.
- Responding to a question on checks of the eligibility of investment costs, Ms Alvarez de Vera stated that they were doing on the spot checks of every investment.

In addition, Mr Colin Byrne of DG Employment, Social Affairs and Inclusion explained that as regards the calculation of staff costs under Article 68(2) of the CPR, if the managing authority does not have data for a complete year, but e.g. for only six months, the data can be extrapolated to cover a complete year. It is not a problem either if data is from the preceding year. This provision was furthermore clarified in the recent Commission proposal on the amendment of the Common Provisions Regulation within the MFF mid-term review (the

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<sup>1</sup> REGULATION (EU) No 1305/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2013

<sup>2</sup> [http://ec.europa.eu/regional\\_policy/en/information/publications/guidelines/2014/guidance-on-simplified-cost-options-scots-flat-rate-financing-standard-scales-of-unit-costs-lump-sums](http://ec.europa.eu/regional_policy/en/information/publications/guidelines/2014/guidance-on-simplified-cost-options-scots-flat-rate-financing-standard-scales-of-unit-costs-lump-sums)

Omnibus Regulation). The Commission intends to make a set of Q&A's regarding SCOs available to Member State authorities in the near future. As regards the binary nature of lump sums (i.e. all or nothing), Mr Byrne said that this could be addressed by using milestones for outputs, i.e. if an agreed part of a project is delivered, an agreed part of the payment should be paid. The milestones have to be defined upfront. In addition, referring to the compliance with the public procurement rules, Mr Byrne said that if a project was fully procured, then there would be one invoice and the added value of using SCOs would be questionable. If the project is partly procured, SCOs could be used for the whole project, but in the end it is a judgement call of the managing authorities as to what is the most efficient way of using the resources.

Mr Michael Grosse of DG Employment, Social Affairs and Inclusion added that when SCOs are used, the Commission's would check compliance with public procurement rules on a horizontal level. Such a thematic audit could take into account other audit bodies' opinions. The Commission recommends that national auditors apply the same approach. He further underlined that in the case of flat rate for indirect costs of up to 15% (Article 68(1)b of the CPR), the definition of direct staff costs has to be clear. There is no need to justify the rate of "up to 15%".

**The second presentation** concerned ERDF SCOs applied in the Northern Ireland Investment for Growth & Jobs Programme (2014-2020) and was given by Ms Maeve Hamilton. She explained that the reason behind the introduction of the SCOs in the current programming period was that in the previous period they had a lot of small projects in the area of SME support and high error rates for low value transactions. SMEs as well requested simplification especially when it comes to staff costs. Around 50% of the 2014-2020 support is concentrated on grants for research and innovation in SMEs and this was the focus of the SCO. Labour costs represent almost 50% of the total cost of the project and because of its complexity, claiming staff cost is prone to errors. Attempts to use flat rates in 2007-2013 were abandoned because it was too burdensome. Audit authorities were there in the process from day one. However, the auditors were not satisfied with the quality of the data set and it had to be broadened. That took two years of work, but resulted in just one pound higher hourly rate than initially proposed. The implementing bodies had split views, for example some of them were afraid that a 25 pounds/hour rate might discourage some SMEs, because they pay higher wages. However, this did not turn out to be true. The added value of introducing the SCOs is visible, the checks are less burdensome, the feedback from the beneficiaries is very positive,

even though it took 24 months to elaborate the methodology. The mindset had to change at all levels, of all participants involved – from the previous “check every EUR” approach to the SCO approach. As regards meeting the other horizontal requirements, such as the public procurement, the Northern Ireland authorities referred to the general audit assurance about the compliance of the local authorities and decided to either take the risk or do the control on a sample basis. This approach was supported by the Court of Auditors. The GN should be maybe more clear about this issue in order to address the repeated questions. Ms Hamilton suggested that the Commission should consider presenting the audit reports on the SCOs on a regular, annual basis in order to show the added value and that it is possible to implement them. She referred to the possibility to apply the SCOs used in Horizon 2020 and asked for further clarifications on the conditions ("similar types of operations and beneficiaries"). Ms Hamilton proposed several other simplification measures, both of legislative and non-legislative nature. In response to this, the Commission explained that Ms Hamilton's recommendations were to a great extent shared by the High Level Group on Simplification and some of them were reflected in the proposal for the Omnibus Regulation.

The Commission replied to some questions from the Member States' experts:

- It was underlined that the audit authority should be on board from the very beginning of defining SCOs and this involvement does not affect its independency.
- The Commission stressed the reliance of SCOs as confirmed by the European Court of Auditors. The Court confirmed in its 2012 annual report that it "did not detect any errors (quantifiable or non-quantifiable) related to the specific use of SCOs."<sup>3</sup>
- While the Commission's guidance note on SCO established that 3 years of data for calculating SCOs is the optimal situation, if the authority has solid data for 2 years only, the Commission can accept them as a basis for the methodology as well.
- If a new employee is hired, the terms of his contract or the terms of a contract of a comparable employee could also be used to establish the annual gross employment costs (Art. 68(2) CPR).
- As regards compliance with state aid rules, it was clarified that the amount of an SCO can be used to check compliance with these rules.

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<sup>3</sup> ECA Annual Report 2012 C 331/175, paragraph 6.23



**The third presentation** was delivered by Ms Marta Corsi and concerned the ESF support in the YEI programme. In this case, a delegated act will be adopted by the Commission in October 2016. The managing authority has already some experience from the previous programming period with SCOs. One of the lessons learnt was that it is useful to involve the Commission from the beginning of elaborating the methodology in order to have clarity about its expectations. Secondly, the data to be used for SCO methodology has to be updated and easy to access – some Italian regions did not have useable data or did not have it at all and these had to be excluded from the methodology. However, the other regions, which had useable data, represented over 60% of the YEI support and therefore representativeness was ensured. Ms Corsi stated that it was a very significant achievement for Italy to be able to use SCOs across the whole country.

As a conclusion, Mr Gilland suggested that next year the group could come back to a discussion on the use of SCOs and have an exchange between the Member States on the issues encountered. Mr di Pietrantonio asked the Member States' experts to indicate to the Commission if they were willing to use SCOs. In Interreg a vast majority of projects are small and SCOs could be used so the Commission encouraged the Member States to exchange ideas.

## **6. Information Note on the clearing of annual pre-financing in the accounts**

With reference to the letter sent out by the Commission to the programme authorities regarding the clearing of annual pre-financing in the accounts, Mr Gilland made a presentation of possible scenarios for the preparation and submission of the accounts, depending on the progress in designation. Mr Gilland explained that only around 40 programmes submitted applications for interim payments, but still the remaining part of the annual pre-financing would have to be recovered by the Commission. The balance was positive only in case of the Spanish SME Initiative programme. For the remaining ca. 270 programmes, no expenditure had been certified and therefore the whole annual pre-financing amount would have to be recovered. In order to help Member States from the cash flow point of view, the Commission would pay the next annual pre-financing and at the same time it would issue the recovery order. Alternatively, the Commission was considering off-setting the recovery of the previous annual pre-financing against the next annual pre-financing, which would mean that next year the Member States would receive 0,625% instead of 2,625%.

However, this had to be examined from the legal point of view. Once the feasible options are identified by the Commission, they would be transmitted to delegations by the EGESIF Secretariat and the Member States would be invited to express their preferred option. The Commission aims at accepting the accounts as soon as possible, i.e. end of March/beginning of April 2017, in particular when no expenditure had been included.

In response to the experts' statements and questions, the Commission provided the following answers:

- The Commission noted down initial interest of some delegations in the option of off-setting the annual pre-financing by the Commission. The Commission agreed that recovering the previous annual pre-financing and subsequently paying out the next one would be difficult to communicate to the public and it could indeed have a negative impact on the wider perception of cohesion policy.
- The Commission confirmed that in the case of payment of the next annual pre-financing and offsetting the recovery order would be coordinated.
- The Commission also confirmed that if the authorities had been designated in October 2016, then they need to submit a final application for interim payment with 0 amounts and submit the accounts in February 2017. If expenditure was declared, then the examination and the acceptance of the accounts might take slightly longer than in the case of the accounts with no expenditure. And the annual pre-financing will only be recovered (possibly via off-setting) partially.
- The Commission explained that it might be necessary to amend the current guidance note on accounts in order to reflect procedures. However, if this amendment has to be adopted by the College, it may not be immediate.

## **7. Handling of cases affected by police investigations and on-going OLAF cases at closure**

Mr Gilland explained that around 50 cases affected by police investigations and on-going OLAF cases would probably not be finalised at the end of March 2017. He explained that cases **with a suspensory effect are listed in Annex VII to the closure declaration** and that these cases would be treated separately, after the payment of the final balance, once a final decision is taken on them by national jurisdictions. For the **cases without suspensory effect**

**on-going on 31/03/2017**, Mr Gilland advised that there were two options and recommended the first one to the Member States. Each option would have a different effect at the moment of the payment of the final balance:

- a. The Member State does not include that expenditure in the final payment claim and takes out any already certified expenditure for those projects from the previous interim payment applications. Under this scenario, the closure will not be delayed but should the expenditure be declared clean, Member States will not be able to introduce it subsequently.
- b. The Member State includes the expenditure in the application for the payment of the final balance. In such a case, DG Regional and Urban Policy will ask the Member States to provide information on the exact total expenditure linked to the projects in question. With this information available, the Commission can process the application for the payment of the final balance and exclude that expenditure. The specific amount would be processed separately, after the payment of the final balance, once the OLAF or police investigation is resolved. If these cases are declared as fraudulent, it will never be possible to replace the expenditure with other, regular expenditure. If the case is cleared, it will be treated as the cases listed in the Annex VII to the closure declaration.

In response to the Member States' questions, the Commission provided the following clarification:

- For cases in point b), the DG Regional and Urban Policy will make the payment of the final balance as regards the regular expenditure, but it will keep open commitments for cases affected by police investigations or OLAF financial follow-ups. If the resolution of the cases leads to the conclusion that the underlying expenditure is legal and regular, Member States would have to resubmit the final payments claim for the affected projects, but the exact mechanics for this process are not yet set.
- DG Regional and Urban Policy intends to set aside the exact amount of the projects, or part of the projects, which is under investigation, but this is yet to be confirmed by the Commission. The application of a proportional approach is intended, limiting the explained practice to the individual contracts concerned by the investigation. However, the Member States should reflect if the on-going investigation relating to one part of the project has an impact on other parts of the project.

- There is no deadline for the investigations to be completed and resolved. Some cases from 2000-2006 are still open. The relevant commitments will be open as long as it is necessary to reach the final result of the investigation.
- Member States may signal to the EGESIF Secretariat the cases where information is needed about the status of a Commission reply in response to comments/replies made by the Member States' authorities to OLAF recommendations.

## **8. Any Other Business**

The French delegation made a short intervention to raise that they had sent a note to the Commission in June about the reporting of output indicators in the Annual Implementation Report. Mr Gilland offered to circulate the document to all Member States for any comments and reactions.

Mr Gilland explained that internal discussions were still ongoing about the date of the next meeting and whether the meeting provisionally listed for October in the Annual Working Programme would be organised. He indicated that an e-mail confirmation would soon follow. He encouraged Member States to reflect on the issues to be addressed in the upcoming EGESIF meetings, also in the context of the Annual Work Programme for 2017. He brought up as possibilities the issue of technical adjustment of cohesion envelopes, or lessons learned during the annual implementation report exercise. The proposal for the Omnibus Regulation is the scope of competence of the Council and the European parliament rather than the EGESIF, but once the process of legislation is concluded, practical implications of the changes might be discussed in the EGESIF as well.

As there were no further points, the chair closed the meeting.