

The High Level Expert Group monitoring simplification for beneficiaries of ESI Funds (HLG)

Dear friends

Two years ago, the Commission asked me to chair a group of high-level experts (HLG) with the task of proposing ideas to simplify the rules of the European Structural and Investment Funds for beneficiaries. I agreed to do this from a background of seeing the significant added value of these funds and Cohesion Policy in improving the quality of life of EU citizens, while also recognising the bureaucratic burden using these funds creates for beneficiaries.

Our group comprised 12 high-level experts in the ESI Funds which facilitated interesting and knowledgeable discussions during which all aspects were analysed and debated. The group made recommendations for the 2014-2020 programming period, several of which the Commission has already taken on-board in legal proposals and in its daily work. The possible non-legislative measures identified by the HLG have significant potential to deliver meaningful change on the ground if taken seriously by all parts of the system, including the Commission and the Member States.

The group also made recommendations for the post-2020 period. The proposals are explained in the pages below and we hope that not only the Commission but also the two co-legislators, the Member States, as well as national, regional and local authorities will read them with interest.

Simplification is not only the job of the Commission –we often find that additional rules and complexity are added at the level of the Member States and regions. The group recognised that simplification is a complex task for all and should be approached with persistence and a long-term view to continuously keeping bureaucracy at bay at all levels. It is important to note that for the beneficiary, the simplest rules are those that are few in number and preferably the same as those that apply in their Member State already, i.e. national legislation. So we need to keep the rules coming from Brussels to the required minimum, as is outlined in the proposal below.

In a Europe where populism is currently on the rise and the benefits of globalisation have not been equally shared, the ESI Funds continue to touch and improve the lives of all Europeans. Therefore, simplifying the delivery method for these funds is neither a technical nor bureaucratic matter, but one of the highest political importance. We need genuine subsidiarity, the kind that builds trust and allows the Commission to enable the Member States and regions to deliver these programmes and investments, since they are closest to the problems that need to be solved. Simplification will not be the silver bullet for all of today's challenges, but it will certainly help to make the results of these vital funds, and the policies that underlie them, more visible to the people and improve their lives.

Sincerely,

Siim Kallas

Simplification: HLG proposal for policymakers for post-2020

EU Cohesion Policy, the rural development and maritime and fisheries funds (ESI Funds) constitute the most spectacular investment strategy for a more competitive and social European Union. To advance **prosperity cohesion**, through these funds the EU is spending more than EUR 450 billion during 2014-2020 on investments in infrastructure, skills, competitiveness of enterprises, and services to people.

In recent decades, these funds have had a major positive effect on development and catching up in the less-developed regions. This has been achieved in large part as the result of linking EU budget investments to a better application of public procurement rules, structural reforms, environmental *acquis* and greater transparency. More and more effective and professional controls and audits have been added. Quite often, we face a situation in which the positive effects are overshadowed and the funds receive disproportionate criticism for mistakes in spending and a few examples of fraud.

Over the years, to counter the criticism and eliminate mistakes, more rules have been added at European and national levels which, rather than helping, are now undermining the trust in the ability of beneficiaries, regional and national administrations to manage and use the funds in a sound and efficient manner. The volume of rules for Cohesion Policy alone, including more than 600 pages of legislation published in the Official Journal (more than double that in the period 2007-2013) and over 5000 pages of guidance, has long passed the point of being able to be grasped either by beneficiaries or by the authorities involved.

The complexity of rules does not stop at the EU level. The objectives of the ESI Funds are defined in 532 regional, national and Interreg programmes. Some Member States have set up more than 50 programmes, while others manage with less than 10. With each additional programme, new institutional structures are created which must be accredited, increasing the risk of divergence in the requirements for beneficiaries.

This complexity is not an inevitable feature of shared management. A much simpler and more focused delivery system, with less legislation and guidance on ESI Funds, is possible, mainly if the beneficiaries' point of view is fully and coherently adopted. It needs to be accompanied by a full alignment of horizontal rules with other EU instruments, such as state aid, and simplified cost options, which should treat similar projects in the same way, irrespective of the mode of management. Such simplification will not adversely impact the effectiveness and accountability of public funds, but given the proven capacity of effective controls in more and more Member States and regions, it would rebuild trust and allow the Commission and the Member States to focus on key issues, freeing up the resources currently spent on lengthy and detailed controls or unnecessary tasks.

This simpler system should be open to every Member State/programme: those that already have the capacity to ensure reliable spending would benefit immediately, while a significant cleaning of unnecessary complexity¹ from the current legislation (via deletions and

¹The Group proposes the deletion or radical reduction of content for the following parts of the ESIF regulations: redundant "whereas", articles on EU cross priorities, CPR when repeating concepts already considered in the regulation: cross-financing, financial instruments, revenue generation, certifying authority, geographical eligibility (Article 70 CPR), major projects; ERDF (scope); the Group also proposes to review unnecessary guidelines.

reformulations) would allow a stable delivery framework to be kept while enabling others to push forward with the catching up required to fulfil the necessary conditions. The new system should be established not only for one programming period, as much simplification stems from operating under stable rules that do not need to be relearned every seven years. It must take advantage of best practices from other EU policies and instruments, improving synergies and complementarities between them, and move towards an aligned, coordinated and non-redundant set of rules within the ESI Fund family.

A differentiated approach, based on the subsidiarity principle, does not have to mean trying to define every detail of the regulation's delivery system at the EU level, but must be based on trust among all the actors involved, concretely applying the partnership principle. The HLG proposes to consider the following results-oriented delivery mechanism for ESI Funds in the post-2020 period:

Principles

- EU funds should be delivered via existing **national administrative mechanisms** by continuing with the current systems where they are required and are functioning well;
- A streamlined and more effective common European set of rules should be provided to enhance the meaning of a common policy and to ensure a level playing field for Member States;
- Much **shorter legislation**, kept at the level of strategic policymaking and principles to be followed when spending. Fewer rules will mean fewer errors.

Criteria to be fulfilled by a Member State/region to be able to use this option

- A reliable management and control system;
- Significant (for example, 50 %) Member State/regional public co-financing rate for the programmes, to incentivise effective spending;
- A solid strategy that outlines objectives and key structural reforms in the supported policy area in the Member State/region. The strategy is agreed with the Commission and its milestones form the basis for funding;
- Funding allocated to a limited list of policy areas, to be chosen within a common European menu, which may vary by region according to the development needs of the region and EU objectives.

Practical set-up

The Member State and Commission discuss and agree strategies in each of the policy areas to be supported, agree on mid- and long-term objectives and time-bound relevant and achievable deliverables, the structural reforms to be achieved, and key implementation steps which would trigger payments. There is a regular review of progress between the Commission and the Member State. Where there are multiple programmes, an overall strategic national-level document reflecting key elements of the agreed strategies is also agreed in parallel with the strategies. This will give an overview by Member State.

Controls based on Member State responsibility

Commission audit work would be of limited scope, focusing on verifying whether or not the Member State system for reporting on milestones and achievements from a given Member State as the basis for EU reimbursements is reliable.

To provide assurance, Member State audit work would be carried out in line with international standards for public-sector auditing, distinguishing well between fraud and errors without further need for the Commission to micromanage the process.

The proper functioning of the national system implementing EU rules related to public procurement, state aid and the environmental *acquis* would be a precondition for the delivery mechanism to be approved. The enforcement of possible infringements would be done under standard rules for the respective frameworks, without directly affecting the agreed EU payments under the strategy.

All HLG proposals for post-2020:

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1. Streamlined, more-effective shared management

1. Members of the High Level Group (HLG) consider that the current system's weaknesses are not an intrinsic element of shared management. The complexity stems from unequal and disproportionate EU requirements outside Cohesion Policy. To simplify the current system, the Commission should put forward a proposal which avoids overlapping responsibilities and trying to regulate and control almost every aspect of implementation, and is based on the effective application of the subsidiarity, proportionality and partnership principles.
2. The architecture of the ESI Funds post-2020 needs to reflect Cohesion Policy objectives to achieve the balanced territorial development of the EU and to be based on strengthened and more effective shared management which respects national rules and systems, ensuring better control that examines compliance of the overall systems rather than the performance of national bodies' work. The fulfilment of an *ex-ante* conditionality should be much more clearly recognised as proof that the national system is functioning properly and should result in a smaller control burden.
3. To ensure result orientation, a coherent system of indicators with harmonised terminology and definitions must be used to assess the performance of the different funds and the success of the policy.
4. It is necessary to strengthen the link between different levels of regional or sector planning and the ESIF programming and implementation. This could include a broader use of integrated approaches, taking into account the regional and national context. For a more complete view, other EU instruments not implemented in the shared management mode (such as EFSI or the centrally managed programmes, especially those contributing to territorial cohesion) may also be considered in order to accommodate the different development needs of diverse territories within regions, thereby achieving the Cohesion Policy objectives.
5. Programmes should be strategic documents and thus much more concise. They should focus on intervention logic, indicators and elements which require agreement with the Commission. Operational issues should be left to the responsibility of the managing authorities – with monitoring committees playing their role according to the institutional set-up – to allow for procedural and operational flexibility and efficiency.

By delivering investments where they are most needed – at the local and regional level – ESI Funds improve the daily lives of citizens and bring Europe closer to them. They deliver tangible results that citizens can see with their own eyes: better public transport, better access to faster internet, a better environment, improved skills and access to work, and better schools and hospitals. By working jointly with national, regional, urban and other local partners in a longer-term development perspective, ESIF also enhance strategic investments which are the

basis for long-term sustainable growth and employment, in line with EU objectives. Promoting innovation and skills, tackling poverty and social exclusion are challenges which concern all regions irrespective of their level of economic development. In so doing, the ESI Funds are much more than just funding instruments – they are an expression of Cohesion Policy and its objective to achieve a balanced territorial development of the Union, which is both necessary for the proper functioning of the Single Market and to ensure the EU's competitive position on the global scene.

At the same time, the six sets of conclusions and recommendations already adopted by the High Level Group (HLG) highlight the need to reduce the number and complexity of rules governing ESI Funds. Beneficiaries often do not understand the rationale for many of the requirements which have accumulated over time since the specific funds were created, and while implementation of the HLG recommendations for 2014-2020 would ease the burden and shift the focus from compliance to results and effectiveness, it is clear that much more needs to be done to make the policies behind the ESIF more effective beyond 2020. Effective simplification would improve communication and focus visibility on results rather than risks, thereby improving the reputation of both the policy and the EU.

The HLG's objective is to identify the key elements the Commission should take into account when preparing the framework for the post-2020 period. In line with the key principles of subsidiarity, proportionality and sound financial management, we should clearly define the roles of the Commission and Member States, including at the appropriate sectoral and territorial level, and of the social and economic partners, including civil society. The discussion on simplification is taking place at a time when other fundamental issues would have to be addressed, including the fundamental decision on the future of Europe, the need for and contents of the EU's post-2020 strategy, and uncertainties such as Brexit, which will affect the Commission's proposal on the multiannual financial framework (MFF) and ESIF. However, we do believe that the discussion on simplification should not be put on hold. Presenting a realistic proposal for the post-2020 Cohesion Policy and ESI Funds management system, which is much simpler and maintains what is already effective, can help restore trust and become an important argument against Euroscepticism and 'cohesion-scepticism' which is often used in the national and European political debate.

Conclusions on the implementation mode

HLG members have reflected openly on the possible benefits of implementation modes other than shared management, and whether and how these could be included within the European Structural and Investment Funds (ESIF) framework.

While in some limited thematic areas or cases a more centralised management mode may have additional benefits, the HLG members are convinced that overall such a change is neither feasible nor justified, especially in line with the subsidiarity principle and proportionality, and would be detrimental to the efficiency and effectiveness of investments. The main reasons are:

- In the current general political context shared management – even if, in its present form, it is more complex than other management modes – may be more beneficial as it brings Europe closer to its citizens and connects local needs and European objectives;
- The objective of reducing disparities among the various regions’ levels of development could not be effectively accommodated under more centralised management, as different regional situations and needs require recognition of regional specificities. It would be particularly difficult to effectively use national, regional and local partners to identify actual investment needs, which differ significantly between different territories;
- It will be difficult for the Commission and its potential partners other than Member States to handle effectively such a number of applications and projects (while such an approach would also imply a significant increase in staff/management costs at the Commission level). Capacity constraints in any more centralised systems would inevitably lead to limitations in use or the availability/quality of information in national languages, advice in more remote areas being less accessible, etc.;
- Co-financing will no longer be provided by national and regional budgets if they no longer have a management role, resulting in a lower leverage; this reduced role also means less ownership of the EU objectives the programmes promote as well as losing the effective mechanisms to stimulate structural reforms which are the responsibility of the national and regional levels.

The main elements that have been identified as apparent advantages of the more centralised management modes compared to shared management relate to state aid and public procurement. However, HLG members are very convinced that this differentiation in treatment is not an intrinsic part of the shared management mode. As was underlined in the reports already adopted, the competition rules necessary for the internal market functioning, which underpin state aid and public procurement rules, should be applied consistently across the entire EU budget, irrespective of the implementation mode.

On the other hand, a system in which implementation is the full responsibility of the Member State, with a more limited role and involvement for the Commission in implementation, carries the following risks:

- Uncertainty which, as the HLG members have indicated, is a key driver of gold- (or armour-) plating and the current complexity, could become ever-more persistent;
- Inevitably, the visibility and communication of EU support would decline;
- There is a risk that the European dimension would be lost in a time when many challenges increasingly cross national borders.

Difficulties in the implementation of Cohesion Policy are compounded by the fact that national authorities implementing ESI Funds are not only responsible for the implementation of projects leading towards economic, social and territorial cohesion, which is their purpose. They are, de facto, becoming responsible for enforcing a growing number of other EU policies, ranging from fraud prevention, through environmental *acquis* and public procurement, to SMEs and statistical systems, both outside and in parallel with other, indeed

often ineffective, enforcement mechanisms specific to those Union policies. There is strong evidence that in many areas the requirements have become disproportionate, and rather than providing positive leverage, they are discouraging more innovative and other necessary investments. In addition, the complexity of the implementation system reveals little confidence in the ability of national regulatory frameworks to ensure compliance and efficient fund management. Hence, in order to achieve simplification, there is a need to review the role of the ESIF management and control system in enforcement of the non-ESIF rules.

Members of the HLG consider the weaknesses in the current system are not an intrinsic feature of shared management. Significant complexities stem from unequal and disproportionate EU requirements outside Cohesion Policy which could and should be addressed: in particular, it is vital to ensure effective coordination between state aid rules and ESI Fund regulations. The current system, which has overlapping responsibilities and is trying to regulate and control almost every aspect of implementation, can be significantly simplified. Such a streamlined, more effective and improved approach would make it possible to benefit from the key advantages of shared management which result from an effective application of the subsidiary subsidiarity principle and common political ownership by the Commission and Member States.

Key principles for assessing options for the post-2020 period

HLG members call upon the Commission to ensure that its proposal for rules post 2020:

- 1) Is more **focused on results**, rather than formal compliance with the rules;
- 2) **Defines clearly and without overlaps the *raison d'être*** of each fund; currently, the overlap of policy objectives and gaps that remain between the funds are reducing the possibilities for real integration and synergies between them;
- 3) Is based on a reformed shared-management mode that makes **effective use of the subsidiarity principle** in which the roles of the Commission and Member States on strategic issues are those of equal partners sharing both decision-making power and responsibility, while leaving decisions on the specific implementation methods, including the optimal mix of grants and financial instruments, to the appropriate national/regional level; shared responsibilities should be formulated in an unequivocal and enumerative way, with clear deadlines for all sides of the process;
- 4) Is **proportional** to the size and nature of the operation funded, with respect to the management and control requirements, is focused on elements with significant impact on the achievement of specific ESIF objectives, and able to minimise the risks to the EU budget; the definition of irregularities should be based on their actual financial impact, and the modalities for using the ESIF in relation to other policies should be reviewed from the point of view of the burden they create on both beneficiaries and authorities;
- 5) Provides a **level playing field** between different modes of management, in particular as regards state aid and public procurement;

- 6) Ensures **effective use of partnership** as the prerequisite to the proper identification of needs and ensuring that funds are used effectively; this includes making proposals which are: (a) timely, to leave sufficient time for the effective involvement of partners during the programming process; and (b) provides space for actual meaningful discussions, by allowing sufficient flexibility for the authorities which involve the partners;
- 7) Focuses on key elements and stops trying to regulate for all possible actualities; the ‘cohesion’ regulation should focus on aspects relevant to Cohesion Policy and ESI Fund management, referring only when relevant to legislation on other policies, rather than establishing a parallel system of rules with respect to horizontal policies, such as public procurement, state aid, etc.;
- 8) Is accompanied by a new approach to **communication** focusing on Cohesion Policy objectives, including simpler and less-abstract vocabulary and outreach efforts to dispel myths and demonstrate that the new rules are indeed simple, and that all institutions, including the auditors, are committed to helping beneficiaries.

The following HLG recommendations on specific features of the management and control system indicate what will be required to fulfil the above-mentioned conditions. While subsidiarity and proportionality, if effectively applied, would automatically result in a **differentiated approach** to many aspects of implementation, the specific modalities of the Commission’s role and that of the various Member State institutions can be adjusted further, reflecting different needs and administrative capacity challenges. This differentiation should not be based solely on the programme's budget, but should also take into account other factors, such as, for example, administrative capacities of the programme institutions, type of intervention, and share of EU funds in national or regional public investments. However, differentiation cannot lead to increasing the complexity of the system since this may become a risk if the number of modalities and criteria rises substantially.

The criteria on which differentiation should be based need to reflect the risk to the budget and be objective, namely easily measurable on the basis of readily available and widely accepted data. In addition, these criteria should be clear both in terms of their definition and in establishing a dividing line. Finally, the criteria should also be related to aspects of the system that can be influenced by the Member State and/or the Managing Authority in order to justify their efforts to move along the scale.

The proper application of the partnership principle brings essential benefits for the policy’s effectiveness. It has the potential to ensure a better informed programming process resulting in interventions that are relevant, targeted and have realistic objectives. In addition, dialogue with stakeholders ensures better understanding and improves trust between partners, leaving further room for reducing the mass of regulatory guarantees set up for this purpose. It may also significantly improve implementation by strengthening shared ownership of the interventions and policy objectives. The **partnership principle** has several dimensions. First, it is about sharing tasks and responsibilities between the Commission and the Member States/responsible programme authorities at the regional level. Second, it is about the role of

‘partners’, such as economic and social partners or local communities, in handling each programme. Both dimensions are very important for ensuring smooth implementation of the policy. The meaningful application of the partnership principle is an indispensable tool to ensure the policy’s effectiveness through both the relevance of programmes and the quality of their implementation. The partnership principle needs to be organised in accordance with the Member State institutional and legal framework. However, there should be an underlining requirement that key actors are involved in all stages of the policy cycle, from programming to evaluation. As indicated in the 6th Cohesion Report: “*The institutional capacity is not just a technical issue, but it depends also on the way public administration interacts with business and citizens and provides them with the services they need.*” It is particularly important to seek the active involvement of partners, both public and private, in all efforts to simplify the use of integrated and community-based approaches, as well as – where necessary – using ESI Funds to strengthen relevant partners’ institutional capacity. The link between different levels of regional or sector planning and ESIF programming and implementation should be strengthened to ensure the mutual reinforcement of trust and the partnership principle in both.

Specific recommendations concerning key components of the implementation system

Architecture of the ESI Funds: the HLG members are convinced that the current arrangements can be significantly streamlined, saving time and resources currently devoted to the numerous discussions between institutions on the delimitation of their overlapping competences rather than on assisting potential beneficiaries. The Commission should consider the following elements when preparing its proposal for the post-2020 system:

- Specific, distinct missions of the individual ESI Funds are enshrined in the Treaty and remain relevant; however, it is also true that they can only achieve the Cohesion Policy objectives together, and **each individual ESI Fund contributes to the mission of the other funds**. Rural development is supported by the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the European Maritime and Fisheries Fund (EMFF). Quality jobs are created by interventions supported through ERDF, EAFRD and EMFF; and ESF investments in human capital and social inclusion are supported by the necessary infrastructure financed from the ERDF and EAFRD. Implementation of cross-financed projects should be simplified, and demarcation lines drawn up in a simple and transparent way, leaving enough flexibility to find adequate and easy-to-handle solutions at both the national and regional level, taking into consideration that the need for integrated ESIF programmes depends on the context;
- The HLG members reiterate that the Commission should reflect on the shared-management system, and examine how **subsidiarity** and **proportionality could be strengthened** and where best practices from the directly managed system could be used to simplify implementation. Apart from a few areas (e.g. those with a high error rate, new and innovative mechanisms and instruments) where the responsibility could remain shared at EU and national level, **national rules and systems (including national auditing authorities) should be used as much as possible**. The

Commission can assess the ability of the latter to fulfil this role through the designation process or some other type of ‘quality check’, to be defined in the regulation which, however, should not lead to abundant auditing or exercises including costly external expertise;

- We support promoting the actions undertaken prior to the deployment of funds to guarantee sound management of public funding and thus helping to further the application of the principle of proportionality. This preliminary work (agreeing on the strategic objectives relevant to the specific regional needs, verifying *ex ante* conditionalities, establishing a performance framework, providing an audited and approved description of the management and control system, etc.) undertaken by management authorities, certification authorities and audit authorities in close cooperation with the relevant services of the Commission is essential, but should result in the establishment of a system of trust, where Commission services subsequently rely on the set up in the Member States/regions;
- Application of the subsidiarity principle means that changes to the overall architecture will leave more flexibility at the Member-State level: **current well-functioning mechanisms could continue uninterrupted** while simplifying the requirements; at the same time, where the current fragmentation of support has clashed with the national set-up, it will be possible to redesign the system in a way that is best suited to achieve the objectives, and splitting the **responsibilities according to normal national practices**;
- The **integrated territorial and community-based approach** provided in the regulations, which allows for a stronger emphasis on the regional and local level, is not used extensively among the programmes – a deeper understanding is needed of the reasons behind managing authorities’ reticence to use this approach, and also investigating the positive effect better integration would have on the use of these instruments;
- Indicators, which will be harmonised in both terminology and definition, used to assess the performance of the different funds should be outcome- and result-oriented and **form a coherent system aligned** to the overarching objectives of the European strategy;
- Better integration of national/regional/local and European funding towards the same policy objectives is required to help to ensure **proportionality**, significant administrative cost-savings in the Member States and much simpler management.

The HLG members are convinced that the **structure, role and detail of the programming documents** need to be redefined. This is the key area of shared competence, where both the Commission, various government levels, and the partners need to engage in a really substantial discussion. Therefore, the Commission should take into account the following key elements when designing the post-2020 system:

- First of all, it is essential that the Commission's proposal is presented and legislation agreed at least six months before the new period starts. Members of the HLG consider that **the proposals for ESIF should be presented formally as soon as possible**

(accompanied by drafts of secondary legislation and guidance in all EU languages) **and no later than together with the MFF proposal** which would give sufficient time for negotiating the regulatory framework before the correct engagement of all parties in preparing the programming documents. Programming would be also significantly facilitated if it could refer to specific strategic choices identified in an overarching European strategy;

- Setting up a separate regulation should be envisaged, dealing exclusively with administering ESI Funds, distinct from the rules on thematic programming which depend on strategic choices. **This regulation** on management and control issues **could be applicable across funding periods** and help to avoid repetitive discussions on ‘evolution or revolution’ every seven years;
- The **regulatory package should be much simpler** and avoid micromanaging the funds. Cohesion Policy’s interaction with and contribution to the EU’s strategic priorities should be enshrined in the regulations, defining a common menu, and should form the basis for the programming documents negotiations, allowing the priorities to be adjusted to specific challenges in a given territory, including the country-specific recommendations. Such a simple regulation would only provide the essential structural elements, but will provide flexibility for the political discussion on national/regional priorities for the programming stage which should allow for a much faster conclusion of the regulation negotiations. More importantly, it will increase ownership of the policies on the ground., This flexibility is needed in particular for proper application of the partnership and subsidiarity principle;
- The **need and purpose of the partnership agreement** or an equivalent document at the national level should be reassessed. Where required, it should not overlap with the content of the programmes, but should focus on overall strategy, avoiding overlaps between programmes, general *ex-ante* conditionalities as well as those linked to CSRs, which are a national-level competence, and definition of the thematic concentration and role of coordination bodies at the national level where they are to have a role in implementation in a given Member State;
- **Greater flexibility in programming** would be welcomed. Part of the allocation could be flexible (not assigned *a priori* to any priority axis), allowing the Member State and the managing authority to **react quickly to emerging challenges**, providing the possibility to rapidly amend the operational programmes;
- Programmes should be strategic documents which are much more concise with descriptive or unenforceable sections removed. They should focus on intervention logic, indicators and elements which require the Commission’s agreement, ensuring their subsequent implementation. Operational issues should be the responsibility of the managing authorities in cooperation with the monitoring committees of the programmes to allow for procedural and operational flexibility and efficiency. It is also feasible to consider further simplification through agreement in the programmes, where applicable (e.g. repetitive measures, investments for which EU-level reference costs can be established, etc.), on simplified programme-level cost options which will be the basis for subsequent reporting to the Commission;

- The Commission should consider the possibility that ESIF programming documents may also include possible interaction with those **EU financial instruments not implemented in the shared-management mode** (such as EFSI or the centrally managed programmes, especially those contributing to territorial cohesion), without prejudice to the ESIF budget accorded to a Member State or region. In such case, an agreement would be necessary which is based on taking into account the specific situation at the national level. The agreement would cover specific demarcation to avoid overlaps and gaps in financing coverage, identify common investment platforms where the various financing sources could ensure the agreements were less one-sided, and include the Commission's commitments balancing the requirements of the Member State. Where appropriate, a common one-stop entry point could be promoted: for example, this could be envisaged for innovation, providing significant simplification for SMEs and other relevant beneficiaries who could apply for funding in one place.
- The thematic concentration principle is important for coherent and strategic programming, but should allow for effective application of integrated solutions at the regional or local level; partners, including local authorities, must have their say at the programming stage, including for the integrated tools used to implement the strategies for sustainable urban and territorial development. As with the indicators, the funds' thematic priorities need an overall coherent system to avoid overlaps and gaps;
- Regardless of the scope of the changes in the implementation mode, continuity of investments could be better ensured, and a quicker start to the new period facilitated if **flexible and smooth transition and perpetuation provisions** are provided. Most types of support will continue to be eligible under the new period, and continuing their implementation on the basis of the programmes and selection criteria which were agreed and thoroughly tested in practice carries little risk while bringing potentially significant benefits.

As indicated in the introductory part of this paper, **conditions related to other EU policies** remain an important reason for the complexity and are the main source of errors. The success of the shared-management mode, which by linking funding to proper transposition and actual implementation has certainly already had an impact on the effective implementation of environmental *acquis* and public procurement rules, may be unappreciated by the general public, but has clearly been spotted by those officials responsible for enforcing various policies where alternative mechanisms are lacking. While each of such links might be justified individually, the overall burden they create on beneficiaries and the responsible authorities is clearly disproportionate. Hence, without jeopardising the overall objective of more effective funding, the conditionalities need to be streamlined and to focus on really crucial areas. The HLG members consider that the following elements, in particular, should be considered for the post-2020 period:

- Rather than formulating in the regulation a long list of *ex-ante* conditionalities which try to cover every possible issue that may not be relevant for most Member States, only a very limited number of common conditions should be defined in the regulation.

Other **conditionalities should be negotiated individually** with each Member State, where relevant to ESI Funds, and where regions are responsible for administering ESI Funds, with the managing authority. They should be relevant for Cohesion Policy and not just an enforcement mechanism for sectoral priorities. The assessment should be less formal, and focus on policy delivery and the substance of results, quality and efficiency. In this context, we should also be open to discuss a connection between the implementation of strengthened Interreg programmes and fulfilling the conditions which would eliminate obstacles hampering cooperation across borders. Such a discussion should also focus on reducing those administrative constraints which are caused by the international specificity of these programmes;

- The discussion on which *ex-ante* conditionalities would be appropriate in the next period could even start now, taking into account both good and bad experience from the current period. The scope of the necessary activities will definitely be smaller as the effects of actions taken during 2014-2020 will still be in place but, at the same time, the finalisation of the current *ex-ante* conditionalities exercise provides the perfect moment to draw lessons for the future. Such an early start to the discussions would allow **deadlines for the implementation of certain conditionalities to be reduced** to avoid delaying implementation of the programmes and having to re-programme at mid-term;
- Fulfilment of a horizontal or specific *ex-ante* conditionality is often **proof that the national system is functioning correctly**, although this is not recognised sufficiently in the follow-up controls on individual projects: the scope and nature of controls has not changed compared to the periods before *ex-ante* conditionalities were introduced. The Commission should thoroughly examine each conditionality to identify how it could bring the necessary assurance which could result in reduced control burden. In this way, *ex-ante* conditionalities would be seen as a positive incentive with automatic rewards – for example, the proper transposition and functioning of EU public procurement rules with the simplification of controls and audits;
- While the correct application of the partnership principle brings significant benefits to managing authorities, in practice in some programmes the code of conduct was treated simply as a formal requirement and the partners' opinions were not taken into account at all. **A meaningful application of the code of conduct on partnership is required** which respects the Member States' institutional and legal framework and proportionality requirements. The programming documents could include a description of how the code of conduct is implemented, including what added value is expected from each kind of partner, how to obtain it, and how to provide evidence of the concrete contribution received. While the Commission should allow for more flexibility and time in terms of the arrangements to be agreed between various levels of governance, it has an important role to play in ensuring that the partnership process is used effectively.
- A broader **use of integrated approaches**, taking into account the regional and national context, could be an effective way of accommodating the different development needs of diverse territories within regions. This would allow for stronger

local ownership of results and for optimising the local contribution to the policy's strategic objectives, but **must not be linked to a greater burden** for managing authorities and partners, or to unclear responsibilities.

- There is **significant scope for differentiation** as regards the application of conditionalities. Lighter procedures could be applied not just for measures with relatively few resources or where urgent action is needed (e.g. in case of natural disasters, or facilitating reallocation of resources to assist refugees), but could also be based on objective measures within or outside ESI Funds (e.g. scoreboards for horizontal policies), which could act as a proxy removing the need to reassess the relevant condition. A specific approach to cooperation programmes is required because of their nature and complexity. Differentiation could also be used to incentivise a results-oriented approach and higher leverage by linking it to the decision to use more simplified cost options or co-financing rates.

2. Recommendations on legislation and guidelines

Many of the requirements established in European Structural and Investment Funds (ESIF) regulations may have a significant positive impact on the quality of projects being supported as well as, in many cases (where national procedures might be lacking) on the general functioning of national administrations. They ensure the focus is on EU priorities, incentivise the structural reforms needed to make the supported investment more effective, provide strategic coordination, encourage partnership, and include the necessary measures to ensure transparency and sound financial management. At the same time, there are too many rules which bring only very limited value, or – because of insufficient differentiation in approach – duplicate what is already being done more efficiently under national or regional rules in currently well-functioning administrations.

The members of the High Level Group (HLG) consider that the following principles should guide the Commission when preparing the new regulatory package:

- **Continuity:** where feasible, the current text should be kept. While it might have been a challenge to learn the new rules at the beginning, after several years of application most beneficiaries and authorities know how to apply the rules. Regulating key institutional issues on a permanent basis rather than having to renew them for every programming period, for example, by making them a part of the financial regulation (but still co-decided with people with experience in ESIF implementation), would send out an important signal for stability.
- **Simpler structure of the regulations and full alignment of terminology:** in many situations, the Common Provision Regulation (CPR) and the fund-specific rules are already quite flexible, but the fact that the same topic is addressed in different parts, along with the huge number of secondary legislative acts, and the numerous cross-references such a structure requires, are creating confusion, especially among the beneficiaries. A specific beneficiary might only be affected by a few provisions, but they get lost in the complex structure. One topic should be tackled either in the act covering common provisions or in the fund-specific regulation, with no overlaps. The regulation with common provisions should only cover provisions which are indeed common to all, and should not comprise several partially overlapping parts which cover the same issues but with different applicability. Instead, it could include provisions related to horizontal issues, such as authorisation for processing personal data related to ESIF implementation, which currently need to be addressed separately. The secondary legislation should be consolidated and organised in a logical way from the beneficiaries' point of view. Furthermore, there is no possible justification for inconsistent terms being used even within the different parts of the same regulation, as is currently the case for the CPR (e.g. priority axis/priority, operational programme/ programme).
- **Elimination of rules which create barriers for smart application of a differentiated approach:** rather than cover every possible aspect thereby defining even more options in

the regulations which, given the variety of projects being supported, would make them even longer than they are now, regulations should focus on key, really horizontal issues to enhance their overall clarity. Rules which now require numerous derogations or lengthy guidelines to cover various circumstances should be removed from the legislative texts, not replaced by guidelines and, if necessary, should be addressed on a case-by-case basis in the dialogue with Member States and programme authorities. These ‘framework-like’ regulations – in accordance with the subsidiarity principle – should provide flexibility and facilitate making full use of partnership. The auditors could get involved in setting up the system to ensure a common understanding and prevent corrections resulting from different interpretations of the requirements; nonetheless, they should respect overall the more flexible framework.

- **Limiting a number of guidelines and changing their nature:** eliminating all guidelines does not seem a viable option as they could provide useful additional information and enhance the legal certainty for beneficiaries and Member States. At the same time, some of the guidelines create obligations beyond what is established in the regulatory provisions. The solution is not to move such provisions to the legislative acts since, as experience from the rules for financial instruments in 2014-2020 shows, not only does such a shift not reduce the need for guidance, but more rules create an even greater need for explanation. Therefore, the following measures should be considered:
 - creating a closed list of guidelines in the regulations on the basis of experience from both the previous and current period; they should be prepared in a timely manner and no further guidelines should be allowed beyond this list;
 - strengthening the rules for involving Member States and partners when such guidelines are being prepared, which should not just be subject to non-binding consultations, but should only be adopted with strong support from all parties. The entire process needs to be transparent (online), with public lists of questions and answers; such transparency should also be ensured for specific bilateral issues being discussed between a Member State and the Commission;
 - auditors should not have the main responsibility for designing the rules in order to avoid the burdensome “maximum control” approach which is often present at the moment. However, the auditors’ systemic involvement in developing guidelines is needed to ensure that principles established in those guidelines are then applied in the same, compliant way by auditors;
 - clarification that guidelines are not prescriptive documents and that other methods not foreseen in the guidelines are also possible;
 - best practices based on real-life cases can provide the most useful guidelines; to avoid the perception that their application is obligatory, it could be considered that ‘ownership’ of their description remains with the responsible authorities, rather than still being a Commission document. However, if validated by the Commission they could serve as off-the-shelf solutions for others, for example, in the form of Q&A documents;
 - authorities would still need to make numerous day-to-day decisions which are not covered by guidelines; empowering programme bodies – with the participation, where relevant, of the monitoring committees and the Commission – to make such

- decisions, as is already the case, to some extent, of Interreg programmes, would remove the need for much guidance if the decisions are later respected;
- guidelines should be available in all EU languages to improve access and avoid misinterpretation; timely quality translation would be easier to ensure due to the much more limited number and scope of the guidelines;
 - clear provisions ensuring non-retroactivity, except when new standards are more favourable to the beneficiary when the controls and audits of the operation. Moreover, regulations and guidelines should promote proportionality and cross reliance on audit (single audit);
 - a “stop signal” for any new bureaucracy: to ensure that the radical overall reduction of rules in post-2020 is maintained during the next period, and to prevent new rules from piling up again, a rule should be made that every new requirement should be compensated for by abolishing another requirement instead;
 - the differentiated approach: the Commission should check every rule to see if it should apply to all Member States or programmes. In this differentiated regime, national (including, where appropriate, regional) rules related to first-level control, eligibility, net revenues, etc. would apply, and only those elements not regulated by Member States (e.g. on information and promotion) would apply as defined at the EU level.

It is not so important for beneficiaries if the requirements are included in the regulations, the guidelines, the programmes, or in certain national documents. Therefore, it is essential to keep the beneficiary’s perspective and ensure that shorter regulations and fewer guidelines are not replaced by the same over-prescriptive rules included in extended programmes and national implementation documents. Instead, the *operational* programmes should become *strategic* programmes and effective mechanisms put in place to prevent the fear of audit which is the main driver of the unnecessary complexity.

As part of maintaining the current general legislative framework, a separate and complete regulatory framework for the Interreg programmes should be maintained, with specific rules applicable to all interregional and transnational cooperation beyond Interreg. In particular:

- they should continue not to be subject to the same *ex-ante* conditionalities as national and regional programmes;
- include a complete set of common indicators tailored towards the Interreg programmes, relying where possible on available NUTS3 data to avoid inconsistencies among Member States, as well as additional, ETC-specific thematic objectives tailored towards the special needs of border regions;
- exempt ETC programmes from the application of state aid rules given the low value of projects and the unlikely negative impact on trade and competition;
- facilitate the future use of integrated instruments at the local level by having a separate designated objective/investment priority for this purpose, while keeping their optional nature;
- introduce a single set of rules to be followed by all programmes: document templates (e.g. for the most-used public procurement categories), as well as templates based on

the electronic monitoring system (eMS) provided by Interact, to ensure a uniform approach by all programmes (application forms, progress reports, etc.);

- clarify the role of European Groupings of Territorial Cooperation (EGTCs).

The HLG members consider the following more specific proposals as possible elements of the simplified legislative package:

- programming documents: with a focus on programmes, with no regulatory provisions related to the Common Strategic Framework and partnership agreements not required for Member States with a single or limited number of programmes; streamlined partnership agreements (or, where applicable, the programmes) should focus on synergies with other EU and national instruments, as well as elements applicable at the Member-State level, such as country-specific recommendations, or *ex-ante* conditionalities which, in accordance with the institutional set-up of a given Member State, need to be addressed at the national level, without repeating the content included in the programmes;
- reassessing the need for designation and, if it is maintained, making it much more focused and preventing reassessment of elements in the systems that do not change (which would be facilitated by keeping the current text of the regulations, where possible);
- more extensive use of off-the-shelf simplified cost options, including for projects subject to public procurement;
- harmonised, much shorter and less-prescriptive rules on publicity (including guidelines);
- streamlined rules for geographical eligibility, net revenue-generating operations and technical assistance;
- reassessing the need for a current approach to major projects and, if it is still necessary to consider them separately from programmes, making requirements less academic and more practical;
- streamlined and more focused *ex-ante* conditionalities, identified either in programmes or in partnership agreements, depending on the nature of the conditionality and institutional set-up in a given Member State, allowing for better use of the work carried out prior to the deployment of funds helping further application of the principle of proportionality;
- clear and proportional rules on state aid;
- eligibility rules – in accordance with the principle of subsidiarity – should remain at the national level; those expenditure categories excluded from financing should be defined in a closed list – without using vague terms such as ‘productive investments’ and ‘endogenous potential’;
- assessment of how the new annual accounts system, management declarations and annual summary work in practice to verify whether or not their benefits are commensurate with the greater complexity and risk of mistakes they create for authorities and beneficiaries.

3. Recommendations on controls and audits

ESI Funds have made a significant contribution to ensuring the correct implementation of EU rules which are necessary for the functioning of the Single Market. Thorough and systemic controls and audits of public procurement, environmental *acquis*, state aid and other requirements have helped to identify examples of the bad transposition of directives and problems with the institutional capacity of those public bodies applying them. It is apparent that in many cases public procurement and other rules are better enforced than in respect of public expenditure outside of the system. This tight control system, which makes any mistake more transparent/visible, creates the misleading perception that the shared management model is more prone to errors. Members of the High Level Group (HLG) are convinced by the opposite argument: as is evident from the error rates, which are declining despite the European Structural and Investment Funds (ESIF) being subjected to higher standards and controlled more often than other national and EU public expenditure (and new requirements being added in every programming period), the implementation system has become one of the most effective enforcement mechanisms for a range of EU policies.

This has been achieved mostly thanks to work by the national authorities. While the European Commission and the European Court of Auditors carry out some audit work, they mainly rely on controls and audits by national authorities (mainly managing authorities and paying agencies responsible for management verifications, and audit authorities or certification bodies).

At the same time, while the success of enforcing various rules is unquestionable, it has had strong negative externalities for ESIF beneficiaries for whom the ever-growing number of rules and the higher risk of controls, with the associated greater legal uncertainty, make funding less and less attractive, thereby reducing its effectiveness. As strongly emphasised in the reports which have already been adopted, changes to the way controls and audits work are indispensable for real simplification and the prevention of gold plating. The HLG members stress the need to implement audit-related conclusions included in the already adopted reports, in particular the report on cross-cutting audit issues, also in the post-2020 period. The following more fundamental simplification measures should form the backbone of future control and audit systems:

- **Fewer rules.** This is the simplest and the most effective way of limiting the number of errors, while allowing the controls and audit to focus on serious issues. Where there is clear evidence that practical implementation of specific rules is difficult, for example, in the context of net revenue-generating projects, financial instruments, or eligible costs, as far as possible they should be replaced by off-the-shelf solutions, such as flat rates, unit costs or lump sums. It is essential that simplification at the EU level is also followed by the simplification of national rules, in order to avoid a situation in which, from the beneficiary's point of view, the requirements stay the same and are simply

‘reclassified’ as national ones. Member States should already do a serious fitness check of their existing requirements and proactively look for best practices from other programmes, with the Commission facilitating the process.

- **Less micromanagement and more reliance on national rules.** The system should be very flexible to be able to accommodate existing national checks rather than trying to define ‘one-size-fits-all’ rules. It should prioritise solutions which are embedded in national rules, rather than creating ESIF-specific checks parallel with or in addition to national systems. The general principles, such as sound financial management, should not be used to introduce prescriptive solutions via guidelines which de facto create new rules and are used by auditors as if they were actual provisions.
- EU auditors should refrain from **directly controlling individual projects** and could concentrate on reviewing the assurance provided by existing national frameworks and systems. A model should be considered whereby the Commission focuses on system audits while control of expenditure remains the sole responsibility of the Member States, in line with the principle of subsidiarity and shared management.
- Avoiding **parallel control** structures: when it is proven that national rules (not just restricted to EU funds) function properly, there is no need to require a re-check by the authorities responsible for ESIF. In particular, in the context of public procurement and the environmental *acquis* and state aid, where the rules are horizontal and should be applied in the same way both within and outside the ESIF, the need for ESIF managing and audit authorities to get involved at all and, when they are involved, to go into a much deeper assessment than is normal practice outside of the ESIF context, should be reconsidered taking into account control burden on beneficiaries and equal treatment under different sources of funding. Specialised bodies (e.g. public procurement offices, competition authorities at Member-State level) that are ‘certified’ by the competent DGs (GROW, COMP) should make their own assessments outside the ESIF management and control system to avoid duplication and prevent a situation in which the beneficiary is confronted with diverging views from different bodies. As a result, the scope of controls and audits within the ESIF implementation system will be significantly reduced, focusing solely on elements related to the policies these funds support.
- Scope of audit **proportional** to risk: either more reliance is put on national systems, or a genuine reduction of audit obligations should be based on *ex-ante* validation (designation, accreditation or system audit, but still founded on common and shared criteria to ensure equal treatment). Such a reduced audit scope, which takes account of the **positive assessment** under *ex-ante* conditionalities and/or designation audit, could provide grounds for **smart differentiation**. Some additional checks may be needed only where it is established that in a given Member State or region there is a serious deficiency from the point of view of a specific requirement. The primary criterion for assessment should be as objective as possible – for example, relying on the existence of serious infringements and procedures against the Member State. Within the ESIF context, proven capacity could serve as an alternative where there may be horizontal problems but the existing ESIF mechanism is effective in providing the necessary assurance concerning expenditure co-financed by the EU budget. Strong provisions

are needed to prevent repetitive system audits where they had already been conducted in the previous period and there is no significant organisational change or other serious reason to audit again.

- To **increase legal certainty**, this could be accompanied by an optional early system audit to confirm the functioning of the systems, which would not only verify the existence of procedures, but would also be subject to (where necessary, for new elements only) a ‘pilot phase’ to test their implementation, and would end with an approval/validation of the procedures by the Commission.
- Focus on **preventive measures**: measures should include the involvement of auditors before approval of all (limited) guidelines, better and regular communication between the Commission, audit and managing authorities to discuss recurring issues and disagreements, and preparing template documents which could be used, for instance, for public procurement in the most common projects. For Interreg, where such off-the-shelf, potentially even obligatory solutions, would be particularly useful, the single set of templates could be developed by Interact.
- Shift towards **risk-based auditing**, reducing the audit burden on beneficiaries/systems with proven capacity (or another effectiveness measure), and for public institutions as well as, where appropriate, a shift towards performance-based auditing where the result of the project is of key importance in the audit trail and the process/its implementation is of secondary importance. For very small amounts, ‘*de minimis*’ rules could be established under which such small amounts could be presumed to be legal and regular, and only requiring audit when the authorities are made aware of specific reasons indicating this is not the case.
- **Single audit+**: the starting point could be raising the thresholds under which any project could be audited only once. But more importantly, ‘higher-level’ audits should, by definition, be related to re-performance, with the beneficiary not affected by any additional future findings. Since most of the burden on the beneficiaries comes from management verifications, not the audit *per se*, as far as possible the requirements connected to each individual payment, or required annually, should be replaced by risk-based verifications which take place just once in the project’s lifetime and are limited in scope (excluding in particular elements which should be subject to verification outside Cohesion Policy and other ESIF by other competent national and EU bodies).
- **A faster and more transparent conflict-resolution mechanism**: while many initial findings are dropped following discussion with the auditors, the necessary procedure to reach the conclusions often takes too long and leaves some of the auditees (or authorities whose previous assessment is being challenged as the result of such findings) unconvinced that they were properly listened to. The HLG recognises the good practices in the Member States and in the Commission which ensure that each issue is looked at by auditors not responsible for the original findings. However, it considers that such internal-only procedures are not transparent enough to the beneficiaries affected by the findings and therefore do not provide sufficient institutional independence and fresh perspective. The HLG members reiterate that the

Commission should consider setting up an appeal committee, which will be really functionally independent, taking into account experience from the European Agricultural Fund for Rural Development (EAFRD) and possibly limiting its use to issues with significant financial impact.

- **More differentiated approach to errors and fraud:** a new definition is needed which clearly distinguishes between fraud and errors, as well as making a distinction between the gravity of errors. Currently, serious issues are lumped together with unintentional mistakes which have no actual financial consequences. In addition, the distinction between treatment of beneficiaries when they commit mistakes for the first time because they are not yet familiar with all the rules and for whom corrections could be replaced by a warning or other soft measures, and repetitive errors which happen despite previous warnings, would also provide for a more proportional approach. Initiatives such as the ‘yellow card’ (50 % penalty reduction for first offenders under CAP support) could be further explored. From the communication point of view, it would also be good to put the numbers into perspective in relation to other public funding, demonstrating the errors avoided and not just the minority which slipped through the system. The justification for the 2 % materiality threshold should also be reconsidered, especially within the Interreg context, as mistakes and irregularities will never be fully preventable, particularly for innovative, small and cross-border projects, or which are implemented by small organisations.
- **Preventing gold-plating:** the fear authorities have that their action will be challenged later or that the auditors might disagree with the solution chosen by them is the main reason for gold-plating. Therefore, the application of all procedures which are not described either in the regulation or guidelines should not be considered automatically as a breach of the rules and should be assessed on a case-by-case basis. As it is not possible to envisage every situation *ex ante* and there might be different ways to reach the same objective, such a case-by-case approach can lead to innovative or simpler solutions.

Application of the above principles, in particular a more risk-based approach accompanied by less micromanagement at the EU level and more reliance on national or regional level controls, would provide the space and flexibility needed to apply a **differentiated approach** – i.e. solutions which are more tailor-made for a given programme, taking into account capacities of institutions within and outside the ESIF implementation system, types of the support which is provided, as well as other factors.

4. Recommendations on unified rules for EU funds

The beneficiaries have a broad spectrum of funding opportunities to analyse when they have a need that requires financing. Identifying the most appropriate financing source can be a challenging process for the beneficiaries. For EU funding, this starts with how different funding sources are commonly referred to – ESIF, ESF, EFSI and other sound-alike acronyms. Moreover, depending on where their project fits best, beneficiaries have to follow different implementation rules. Should they be involved in several projects, they may have to follow different rules for each project, although their projects all belong to the same field of activity.

The Common Provisions Regulations (CPR) was intended to serve as a ‘single rule book’ for all ESI Funds, enabling multi-fund programmes and facilitating access to funds in such areas as integrated urban measures, or support to SMEs, whereby combining support from different funds should provide more effective assistance. It has also provided the option to use not only the European Agricultural Fund for Rural Development (EAFRD), but also other funds, for the successful community-led Leader approach. However, in practice, applying the opportunities provided by the CPR has proven more difficult. That is why the approach needs to be adjusted, taking into account elements which go beyond just the rules established in the CPR. Elements which need to be taken into account include:

- reshaping the policies’ identity and establishing their main goals and objectives;
- links with those EU instruments that are not part of the ESIF family, aligning the rules in a reciprocal way;
- the need for streamlining, not just within the ESI Funds but in the context of EU sectoral or horizontal policies;
- balancing the need for a better alignment of the European funding rules and the need to give more room for alignment with national rules (in application of the subsidiarity principle);
- the need to have requirements adjusted to the type of projects, areas and beneficiaries being supported;
- streamlining the horizontal rules, such as state aid for all ESI Funds;
- setting up of common indicators to be able to assess and compare the efficiency of all EU funding instruments and their impact on different policies;
- a specific approach required in the context of European Territorial Cooperation measures.

The High Level Group (HLG) proposes the following measures to be considered for each of these elements when determining the system for post-2020:

Alignment of the horizontal rules

Horizontal rules, such as state aid or public procurement rules, are often contributing more to complexity than the ESIF-specific rules included in the CPR and fund-specific regulations. It is difficult to justify the unequal treatment of similar projects, for example in the context of SME support. The practical difficulties limit synergies with COSME and Horizon 2020 and make it more difficult to use ESI Funds in a way which is complementary to centrally managed instruments in the field of innovation.

HLG members reiterate their strong conviction that the guiding principle should be that projects financed by ESIF should not receive more restrictive treatment than similar projects under central EU management. A first step could be to analyse existing solutions and good practices used in the funds under direct management and to incorporate them in implementation of the ESIF. At the same time, good practice examples can be identified under ESIF implementation to streamline the implementation of centrally managed programmes.

The treatment of centrally managed instruments should be also considered in the context of the ESIF audit regime (the number, timing and scope of controls), for which the HLG has issued detailed recommendations to avoid unjustified discrimination of the shared management mode.

This principle of equal treatment, including the selection method and criteria, should also apply to the financial instruments irrespective of whether they are implemented by the European Investment Bank or by another comparable, national financial institution (such as national promotional banks working in the general public interest).

Links with EU instruments outside the ESIF family

ESI Funds intervene in many areas which also receive support from the European Fund for Strategic Investments (EFSI) and other centrally managed instruments. ESI Funds are also complementary to national support schemes. Depending on the allocations and priorities chosen for ESIF-financed programmes, a differentiated approach is needed to coordinate support in the context of a specific Member State or region with a view to enhancing synergies as much as possible. Partnership agreements or, where applicable, the programmes should define how both coordination and clear demarcation related to instruments outside the shared management mode are assured. Where appropriate, this could include setting up common investment platforms under which resources could be pooled, or could be addressed by using the respective smart specialisation strategy in place.

A combination of funds and their use for joint projects across different regions could also be facilitated for beneficiaries by enabling support from different sources for the same item of expenditure – including on a pro-rata basis and in the context of EFSI. Such a funding structure should not be treated as double financing if the sum of overall support does not exceed the value of the project. Support for setting up ‘one-stop-shops’ at the national/regional level could also be useful to help beneficiaries to handle ESI and non-ESI Funds together.

Alignment in the specific EU policy context

Specific treaty-based objectives of the individual ESI Funds have to be respected. Care must be taken to ensure that alignment of rules within ESIF/shared management is focused on the needs of beneficiaries who, within the respective policies (ESF in the context of employment policy, the EAFRD in the context of the common agricultural policy, and the EMFF in the context of the common fisheries and maritime policy) may equally likely be potential beneficiaries of the EU-level instruments focused on the policies.

The HLG considers that the Commission should also take into account consolidating the various financing instruments under a given field of interventions. For example, there are several funds that operate differently (e.g. ESF, Fund for European Aid to the Most Deprived, European Globalisation Adjustment Fund, EU Programme for Employment and Social Innovation) the use of which is more or less complicated for beneficiaries to understand, and which compete against each other. A comprehensive social/employment policy-related fund would mean simplification for both beneficiaries and administrators. Such a more streamlined set-up under social policy would also facilitate potential discussions on how to better use such consolidated fund in the EFSI context, thereby further increasing transparency and clarity for beneficiaries. Effective and easy-to-use tools to ensure complementarity and avoid any overlaps of EU investments – which are currently lacking – need to be considered by the Commission and Member States, discussed and introduced in the post-2020 legislative package, derived from aligning EU rules across all types of EU funds.

For those EU funds which support investments (ESIF, EFSI, CEF, Horizon 2020, etc.) overlaps which lead to competition based on a more beneficial legal regime should be identified and removed, with effectiveness and results being the relevant factors to determine which instrument should be the most appropriate in a given context.

Rules which are tailor-made to specific measures

To achieve the desired impact and added value of policies, a 'one-fund-fits-all-needs' approach is not optimal. The policy, its delivery mechanism, legal framework and interpretations must take account of different social, territorial and economic realities to address the specific situations on the ground.

The alignment of rules should not be confused with the need to adjust requirements to the type of projects, areas and beneficiaries being supported. The ESIF covers a very broad range of types of support, and very few requirements need to be applied to all projects; even some horizontal simplification measures need to be fine-tuned to reflect different needs, such as, for example, the share of staff costs is different in a small project than in a bigger one. The uniform one-size-fits-all set of all rules must not mean that disproportional requirements would be imposed on some small beneficiaries (SMEs, NGOs) or projects (to address potential issues in much larger investments), and some requirements (e.g. related to participants) might not be relevant for other fields.

Rather than providing numerous derogations which are confusing for beneficiaries, rules which need such adjustments to the type of intervention should be addressed either in fund-specific rules, or – in line with the principle of subsidiarity and providing more flexibility to find the most suitable solution in a specific regional or national context – by leaving such details to be defined in the programmes or national implementing documents. Moreover, the current common set of indicators should be improved and consolidated in a more centralised way to generate a uniform interpretation of the impact and create the basis for raising/reducing funds and influencing policies and interventions.

Specific rules needed in the European Territorial Cooperation context

The HLG recognises the importance of the European Territorial Cooperation (ETC) in providing a framework for the cooperation, implementation of joint actions and policy exchanges between national, regional and local actors from different Member States. The ETC is recognised as a clear exponent of European added value, by tackling common problems together.

Customised and targeted simplification steps are needed in response to the specific nature of ETC programmes, deriving from the participation of several Member States in one single programme. In this respect, a single separate and complete regulation reflecting ETC-specific implementation provisions is essential to make the rules accessible to beneficiaries and to avoid delays.

The HLG reiterates that ETC programmes should continue to be exempt from *ex-ante* conditionalities applicable to national and regional programmes, due to their specific nature. Moreover, ETC programmes (with low-value projects and the unlikely negative impact on trade and competition) should be exempt from the application of state aid rules, as well as the need to align implementation rules to similar activities (e.g. similar activities financed under Horizon 2020 – direct management – which are exempt from the application of state aid rules).

HLG members consider that effective, transparent and (if possible) comparable monitoring and evaluation must take place to further determine the results and evaluate the impact. In this sense, one complete set of common indicators is required which is tailored towards the ETC programmes. Moreover, data at NUTS III level in cross-border areas should be made readily available to programmes to avoid the current differences in collecting data across Member States.

Recognising the need for better harmonisation of implementation at the level of all Interreg programmes, the electronic monitoring system (eMS) provided by Interact should be continued and its use encouraged. The same monitoring system would facilitate a unitary approach by all programmes (the same templates, application forms, progress reports, etc.) and better aggregation of data to enable proper evaluations.