



Simplification: a key principle for the design of the Cohesion Policy in the period 2021+. March 2018

1. Introduction. Simplification, a goal not achieved

The **statements** of the representatives of the European Commission (EC) and Member States (MS); the **Regulations** governing the European Structural and Investment Funds (ESIF); the **guidelines** that orientate their implementation; and the **documentation** generated by the programs' Authorities, emphasize **the importance of simplifying the management of the Funds**.

Simplification is a fundamental principle in the design of the rules and instruments for implementing and managing Cohesion Policy. But the reality is quite far from this objective.

In fact, **the Funds's management has become more and more complex every programming period**. The transition from 2007-2013 to 2014-2020 has led to a significant increase in the regulatory requirements. First, **the regulations have become much more cumbersome in their wording**; and it can be objectively pointed out that, while the General Regulation of 2007-2013 had an extension of **54 pages** in the OJEU, the current CPR 2014-2020 **requires 150 pages**.

Another example: in the 2007-2013 period, the ERDF regulation was included in a General Regulation, a specific Regulation and an implementing Regulation.

In the period 2014-2020, in addition to the General Rules and the specific regulation of the ERDF, there are at least: **7 specific regulations** (for each ESIF, EGTC, European Territorial Cooperation...); **9 Delegated Regulations**; and **8 Implementation Regulations** (and their respective modifications).

In addition, **70 Guideline documents** have been issued by the EC, which are in practice applied as legislative provisions -in matters such as: programming, implementation, ex ante conditionalities, simplified cost options, thematic objectives, CLLD or financial instruments-; they have been considered as such in the controls carried out by the EC and the Audit Authority.

When referring to "**simplification**" there is a tendency to consider **just the reduction of administrative burdens for beneficiaries**.

This is undoubtedly an important component of simplification; but it is **limited by the principle of sound financial management** of public resources; by the need to maintain an **audit trail**; and by the obligation to ensure that the Funds **meet their objectives**. The regulations for the 2014-2020 period include several simplification measures in this regard, which must be preserved, but also adjusted and improved beyond 2020.

Simplification of ESIF also has to do with the **reduction of administrative burden for the national and/or regional authorities**; the **elimination of redundant procedures and controls** and of **unnecessary requirements**; also, those **elements of difficult interpretation, that give rise to contradictory requirements, should be eliminated**.



This second aspect of simplification is directly linked to the **necessary legal certainty for the agents involved in the implementation of ESIF**. In this regard, there has been a clear setback in 2014-2020.

In the following pages several proposals are included, aimed at improving the legal framework in the post 2020 period, focusing on those inefficiencies observed in the current period.

2. Programming. Ex-ante conditionality. Flexibilidad

Ex ante conditionality has generated a considerable administrative burden during the programming phase in 2014-2020. In practice it meant the **exchange of large volumes of information between the MS and the EC** (redundant, as in most cases it was already in the hands of the respective sectoral DGs). Therefore, the added value of the process can be considered modest.

Sectoral policies should have their own implementation mechanisms, and be applied equally in **all Member States**. **ESIF should not be used as a coercive mechanism to achieve compliance of sectoral obligations by Member States**.

The **ex ante conditionalities should be eliminated in the 2021 + period**.

In any case, **duplication of procedures should be avoided**, such as redundant information or requirements from different EC units.

The **proportionality** principle should be applied, taking into account the situation of each Member State as well as the volume of resources allocated to each sectoral policy.

Taking into consideration the general rule of avoiding duplications, the **sectoral programming set in the Partnership Agreement and the Operational Programs (OPs) should refer to the strategic programming already defined at the MS level**.

For instance, in the area of ICT, the principles, objectives and results set in the Digital Agenda of the MS should be considered.

Or, in the area of R&D&innovation, the existing national or regional innovation strategies should be taken into account; without requiring developing overlapping additional strategies

Only if the sectoral strategic planning is not well developed or is not aligned with the European objectives, it could be necessary to reformulate the sectoral strategies linked to the ESIF. The aim is **to avoid duplication of strategies and overlapping objectives**.

Finally, **flexibility** is another principle that should be taken into account in the programming process.

Flexibility is necessary in the drafting of the OPs, so that each MS or region can adapt **the general orientations** to its specific needs.

Thus, **flexibility is key when setting priorities for every category of region**. Regions differ considerably even belonging to the same category of region. It should be possible to modulate these requirements and even to agree exceptions, taking into account certain specificities (among others: island regions, outermost regions, sparsely populated regions, specialized productive structure, etc.)

Flexibility should also be applied in the evolution of the OPs throughout their 10 years of effective implementation. The current Regulations require EC approval even for minor changes. This entails tedious procedures and endless discussions in details with little strategic impact.



In the post 2020 period, changes in the OPs of a limited strategic impact should be streamlined. EC Decisions should be required only for changes in the financial allocation between priorities exceeding a certain threshold (for example, 10%), as well as for other changes could be considered strategic.

3. Performance reserve

In the 2014-2020 period, **6% of the OP's financial allocation** is conditioned to the fulfilment of certain objectives set in the *Performance Framework (PF)*.

The PF increases the complexity of the re programming process, in terms of: the information to be provided to the EC, the expected results, etc. The PF may be affected by changes in the financial allocations of a priority axis, but also by changes in the type of interventions to be carried out. Changes in the PF are be subject to a thorough analysis by the EC and its Evaluation Unit, increasing complexity, generating delays and administrative burden.

The objective of **incentivizing timely implementation** is already guaranteed by **N+3 rule**.

The performance reserve was **in force during the period 2000-2006**, with modest results; at that time, the allocation process was much simpler than the current one. For this reason, during the discussions of the current Regulations, Spain discouraged its adoption for the 2014-2020.

Therefore, the performance framework and performance reserve should be eliminated in the post 2020 period.

The reasons are:

- It introduces an extreme rigidity that hinders the adjustment of the programs to the normal evolution of the context, the political priorities and the situation of each organism.
- It does not meet its objective of encouraging the most efficient organisms.
- It generates a huge administrative burden for the Managing Authorities, the intermediate bodies and the evaluation and monitoring units.
- The proposed changes in the PF generate mistrust in the EC units towards the Managing Authorities.
- It can punish organisms which may implement the Funds effectively throughout the period, but cannot meet the milestones set in 2018.
- It can generate imbalances in the financial allocation of the programs, deriving Funds towards axes that meet the PF but that may be at the limit in their absorption capacity, or be outside the thematic concentration, or not be a priority for the national or regional Governments.
- It has been questioned by the European Court of Auditors.

4. Reinforcement of new instruments and priority actions

The creation of positive incentives, such as the increase of co-financing rates, should be evaluated in the 2021 + programming period. Especially in areas such as: the use of FIs, SCOs, JAPs, ITIs, among others),

Incentives already apply in the current period for FIs (such as the SME Initiative, with a co-financing rate of 100%, or priorities implemented by a FI, allowing an increase of 10 points in the cofinancing rate).



This type of **incentives should be extended to actions that meet certain European priorities**, such as: assistance to refugees, integration of groups affected by specific problems, immigration, combating climate change, or voluntary application of the CSRs and structural reforms).

5. Designation of Authorities

The procedure to designate the **Managing and Payment Authorities** has imposed a high administrative burden and delayed the launching of the 2014-2020 period.

The candidate bodies have drawn up the description of functions and procedures. These documents were reviewed by the Audit Authority. These are necessary practices to ensure efficient management systems.

But such revision follows extremely detailed and strict criteria, which go far beyond ensuring that the national systems meet reasonable standards of sound financial management and correspond with good practices recognized in the administrative procedures of each MS.

Trust between public institutions and **subsidiarity** should be guiding principles in the implementation of **shared management instruments such as the ESI Funds.**

In the post 2020 period, **national bodies responsible for the management and control of the ESIF should not be subject to a formal designation procedure.** Such functions shall be assumed by the responsible national bodies according to the MS structure.

National **authorities may establish procedures to designate their intermediate bodies**, which will be based mainly on the demonstrated capacity throughout previous programming periods.

6. Annual Accounts system, advances and interim payments

The **Annual Acceptance of Accounts and Management Declaration** foreseen in the 2014-2020 Financial Regulation entails a **drastic increase in complexity.**

This implies the introduction of new functions in addition to those performed by the national authorities up to now. It is also a bureaucratic and redundant burden, which does not add substantial improvements to the regularity of the expenditure. The reasons are:

- It requires the **submission of a summary of controls**, that should be the one referred by the Audit Authority in its Annual Control Report; but, according to the regulations, it is a different document.
- The **Managing Authority confirms the adequacy of the accounts prepared by the Payments Authority** (which must be independent from the managing authority), that cannot make without the list of controls of the audit authority and without knowing the declaration of assurance drawn up by the management authority (based also on the audit authority's report).
- In addition to the risk of overlapping of the actions of the three authorities, which **might fall into a loop, a serious problem of coordination has been created between them to meet the deadlines to send the Annual Accounts and the Management Declaration.**

The system of Acceptance of Accounts is linked to a **new payment system** (where only 90% of the aid corresponding to the expenditure made is paid) and an **advance payments' system** ("pre-financing"), that includes two types of advance payments: initial and annual. Interim payments and advance payments are subject to an annual compensation system based on the Annual Accounts.

This complex system, based on an annual cycle, does not adapt well to the ERDF and Cohesion Fund, which finance mostly **multi-annual projects.**



Added to this is the different treatment for payments corresponding to **operations certifying total expenditure** and **operations certifying only public spending**.

The **degree of inefficiency, redundancy, inconsistency, and as a result, uncertainty, introduced by the Annual Accounts system and the Management Declaration, new to the ESI Funds in this programming period, justify their elimination for the post 2020 period.**

For the next programming period we propose to recover the system used in 2007-2013: **non-application of Annual Accounts; payments of 100%; unconditional advance payments (pre-financing), initial or successive**, disconnected from any annual clearance of accounts.

7. Financial instruments (FIs)

The **management and control of the FIs** should be defined according to the usual practices in the banking system.

The FI management **should be similar to that of the EIB/EIF FIs -not financed by the ESIF-**. The requirements on **State aids** should be equal to the most favourable treatment for the EIB/EIF IFs.

Overregulation should be avoided and the **autonomy of the authorities of the Member States in the design of FIs should be favoured**.

The regulation on banking instruments and on State aids constitute a well-structured framework, being unnecessary to define additional requirements on the Funds. In this regard, the provisions in the CPR that refer to FIs are burdensome and sometimes contradictory.

In general, it is considered unnecessary to define a **regulatory framework for the FIs similar that of the non- refundable aids**.

The final beneficiary of the FIs is usually an SME. If FIs are subject to the same restrictions than grants, the SME will always prefer the latter.

In 2007-2013, the FI as a whole was considered "an operation". By contrast, in 2014-2020, operations are defined as each of the financial transactions in it included. In this way, all the obligations previously applied to the FI as a whole, now apply to each and every loan or guarantee. The result is a high complexity in the FIs management compared to FI of a similar nature not financed with ESIF.

Another example of overregulation is non compatibility of FIs and grants, even being the total aid intensity below the maximum allowed. This additional condition does not produce any results and restricts the efficient use of resources.

Also, the restrictions on the certification of FIs -that has to be carried out in tranches of up to 25% of the total-, including specific obligations for the use of previous tranches, discourages the use of FIs.

Legal certainty is also a serious obstacle, affecting the development of FIs. A first sample was the guide for financial corrections for FIs in 2007-2013, which was presented by the Commission in December 2013. This guide was applied retroactively along the period. In 2014- 2020, the on-going modification of the CPR raises serious doubts about the retroactive application of certain provisions that affect the verification and control of FIs.

Retroactivity must be eliminated in the implementation of FIs. Such legal uncertainty may be decisive when deciding whether or not to constitute an FI, since this is a tool that will be in place in a long time-frame.



8. Simplified Cost Options (SCO). State aid

Many interventions co-financed by ESIF (i.e. most of the ones included in thematic objectives 1 to 4), could be financed by other instruments such as Horizon 2020 or COSME. Therefore, **their treatment in terms of eligibility, State aids, controls, simplification, etc., should be aligned.**

In particular, **the legal certainty of implementing simplified costs options (SCO) to State aid must be guaranteed, expressly stating in the ESIF Regulations the full compatibility of SCO with Community regulations in this matter.**

Regardless of the size of the operations, depending on their nature, it may be more or less suitable the application of SCO.

Therefore, **the application of SCO should be decided on a voluntary basis by the national authorities.**

The **use of SCO should be linked to incentives** such as a premium on the co-financing rate for the priority axis using this option.

A weakness of the SCO, in particular for the options not defined in the Regulations, is the **legal uncertainty** of schemes that may have been approved by the Managing Authority, but an external auditor (Audit Authority, European Commission, European Court of Auditors) may consider unacceptable.

To minimize this problem, the regulation of the post 2020 period, several options could be applied: on the one hand, the **existence of a certain number of pre-defined SCO approved by the EC**; on the other hand, the **establishment of a procedure to allow Managing Authorities agree specific SCO with the EC beforehand, to eliminate the legal uncertainty.**

9. Revenue Generating Projects

Another source of complexity and legal uncertainty is the **obligation to consider the revenue generated by an operation to determine its eligible cost.** The procedures can be very complicated and given the variety of co-financed operations, the casuistry is infinite as well as the possible interpretations.

The existence of standardized flat rates for each sector, such as those included in Annex V of the CPR should be generalized for all projects of more than 1 million EUR of eligible cost (as considered in 2007-2013 period).

For the post 2020 period, we propose that the **calculations of the revenues are eliminated, and replaced in all cases by a flat rate defined for every sector and/or types of projects.**

The only **exception to this would be large projects**, in which case the approval decision from the EC would establish the applicable flat rate.

10. Advanced payments

The CPR allows to **certify expenses corresponding to advanced payments made to the beneficiaries**, whether this expenditure is actually made within a period of 3 years.

The **CPR limits this possibility to a maximum of 40%** of the aid to be received by the beneficiary. It is difficult to understand why such a limitation was introduced, and why this advanced payments certification may not **reach 100% of the public contribution**: in any case, the amount certificated will be



supported by real spending, while obtaining the Union contribution corresponding to the disbursement really made means an important financial relief for public entities which grant aids.

Furthermore, there is no reason to limit this possibility to State aids, because all aid schemes are affected by the same financing conditions.

The regulation for the 2021+ period should contemplate the possibility of certifying advanced payments of up to 100% of the public contribution, explicitly stipulating that this option can be applied to any aid regime, whether or not it is considered as State aid.

11. Public investments

Apart from FIs, operations financed by the ESI Funds can be basically classified into **two types of actions**:

- Projects made by public or private beneficiaries selected by public calls subjected to **aid schemes** (which may be or not State aid);
- **Projects developed by public entities** in the exercise of their functions, framed in the corresponding sectoral strategies and financed by their own budgets.

The regulation of the ESI Funds does not distinguish between both types of operations, applying provisions that seem intended only for projects in competitive selection.

In the case of direct public investments, it should be sufficient that the expenditure was made within the period of eligibility and that the operation was eligible under the corresponding programme, complying with the approved selection criteria.

Therefore, for these type of investments some requirements should be deleted, such as a formal application for funding to the managing authority (MA) before the operation has been completed or a MA document specifying the support conditions for each operation.

These procedures, logical in the case of aid schemes, produce an administrative burden increase in projects implemented and financed directly by public entities under the Member State budget.

12. Expenditure verification and audit

Another main source of complexity and legal uncertainty lies in the **system of controls** and in the **multiplicity of bodies that perform audit functions at different levels**: managing authorities, intermediate bodies, certification authorities, audit authorities, European Commission, European Court of Auditors, etc.

It is essential that the burden related to controls, in particular on individual projects, is reduced for the 2021 + period, following the "single audit" principle. Accordingly, the EC and ECA audits on certified expenditure should become absolutely exceptional.

On the other hand, it would be advisable to **ensure maximum synergy between the control tasks carried out by different authorities**; for example, facilitating that corrections made at the request of the management and certification authorities are taken into account by the audit authority when determining the residual error rate.

13. Monitoring, Evaluation, Information and Communication



In 2014-2020, **structured documents** have been used for the first time, both for Operational Programmes and for Annual Implementation Reports. This has led to **illegible, impractical documents** communication purposes

Documents describing public policies (design, monitoring...) cannot be based on a set of tables complemented by short texts hardly descriptive.

These documents must **be legible and user-friendly for the agents involved in the Funds' management; as well as for any citizen interested in Cohesion policy**. The **extension** must be the necessary in each case.

Therefore, **in 2021+, both the OPs and the Implementation Reports should have a semi-structured format**, combining a readable and ordered text according to a flexible index, adapted to each case, with tables showing the relevant data of programming and monitoring.

Finally, the principles of **flexibility and proportionality** should be applied to the obligations concerning **communication** and **evaluation**, delegating the introduction of the best mechanisms to the national authorities, who will adapt them to the characteristics of each program, sector, and region.