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Committee of the Regions

Regulatory Fitness and Performance (REFIT) Programme: EU regulatory bottlenecks and administrative burdens at local and regional level

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It does not represent the official views of the Committee of the Regions.

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Contents

List of abbreviations

AMA	Agricultural Market in Austria
CAP	Common Agricultural Policy
CF	Cohesion Fund
CFP	Common Fishery Policy
CoR	Committee of the Regions
DG	Directorate General
EAFRD	European Agricultural Fund for Rural Development
EMFF	European Maritime and Fisheries Fund
EPRTR	European Pollutant Release and Transfer Register
ERDF	European Regional Development Fund
ESIF	European Structural and Investment Fund
ESF	European Social Fund
EU	European Union
GPA	World Trade Organization's Agreement on Public Procurement
IED	Industrial Emissions Directive
LRA	Local and Regional Authority
PEB	Pro-Environmental Behaviour
SARI	State Aid Reporting Interactive tool
SME	Small and Medium-Sized Enterprises
TAC	Total Allowable Catch
TAM	Transparency Award Module
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the EU
WFD	Water Framework Directive

1. Executive summary

In January 2016, the European Commission First Vice-President, Frans Timmermans, asked the Committee of the Regions (CoR) to submit an outlook opinion on The REFIT Programme: the local and regional perspective. As a consequence, the CoR invited a project team of researchers at KU Leuven – the authors of this report – to draft a report on the Regulatory Fitness and Performance (REFIT) Programme: EU regulatory bottlenecks and administrative burdens at local and regional level.

In a preliminary phase, the project team drafted and sent out a questionnaire in order to gather information on bottlenecks and burdens faced by local and regional authorities (LRAs) in relation to EU law. The responses given by 90 respondents, coming from 14 EU Member States, serve as the major source of information for this report.

Six policy areas – as further detailed hereafter – were selected as case studies on the basis of the majority of responses given to our survey. In addition, a number of cross-cutting policy areas, such as services, were repeatedly identified as creating problematic situations by respondents working for LRAs. These cross-cutting policy areas place a significant burden on administrative capacity rather than creating problems of competence.

The questionnaire sent by the project team to the representatives of LRAs (also available in the Annex to this report) pre-selected a series of bottlenecks. In addition to these pre-selected bottlenecks and situations, LRAs referred to their difficulty in implementing directives, which are frequently very detailed and not suitable for small regions. LRAs also referred to the difficulties that arise when they have to implement EU documents that are non-binding, such as recommendations, and guidelines with regard to third parties. Finally, another bottleneck that has been noted relates to the problem of translations of EU legislation and guidance documents.

Many LRAs mentioned that they do not have well-defined ways of measuring the administrative burden inherent in EU legislation. However, some other entities do measure the burden of EU legislation, primarily in an *ad hoc* way but sometimes systematically.

The respondents identified the following six main policy areas as being particularly subject to bottlenecks and burdens in relation to the implementation of EU legislation:

State aid

- **multitude of sources:** as far as the interpretation of state aid rules is concerned, it appears that the multitude of sources of rules on state aid jeopardise the task of interpretation, notably in relation to the evaluation of compensation from public funds for services of general economic interest;

- **overlap:** rules regarding the same process appear multiple times across many documents, and sometimes within a single regulation. More generally, it was reported by several respondents that the rules governing state aid may, in certain cases, contradict the Regulation on the European Structural and Investment Funds;

- **different definitions:** the lack of clarity of EU rules on state aid discourages small and medium-sized enterprises (SMEs) from using more EU funds;

- **lack of harmonisation:** all the concerns expressed by the respondents related to incompatibilities with regard to the justification of expenses between the state aid regime and the European Structural and Investment Funds regime;

- **excessively demanding reporting obligations:** the European Commission is now asking for all state aid to be reported to the Commission. Previously, only state aid exceeding a certain amount had to be published and reported to the Commission;

Public procurement

LRAs are frequently involved as contracting parties in public procurement and it appears that public procurement policies keep throwing up concerns for a number of these entities:

- **frequent changes and heaviness:** the difficulties in the transposition of the 2014 directives are likely to be due to the very frequent changes in the EU's public procurement legal framework as well as the heaviness of the 2014 legislative package on public procurement;

- **overlap:** overlaps within public procurement legislation is further aggravated by overlaps with other legislative areas (i.e. competition, tax, and state aid);

- **different definitions:** problems of key concept definitions in the field of public procurement have been reported. Notably, different and contradictory definitions are provided by public procurement legislation and by the European Commission's Public Procurement Guidance for Practitioners;

- **reporting obligations overlap:** given the diversity of public procurement laws within the EU, it is not uncommon to have overlaps in the reporting obligations between the regional, national, and European levels in the cases of projects co-financed by Structural Funds. Additionally, guiding rules published by the European Commission can sometimes be misleading;

Environmental protection

- **excessively demanding reporting obligations:** the burden caused by excessively demanding reporting obligations appears to be particularly significant in the area of environmental protection. The Birds and Habitats Directives and their derogations incorporate overly demanding reporting obligations;

- **ambiguity of wording in the Birds, and Habitats and Species Directives**: there are difficulties linked to the ambiguous wording used in specific articles of these directives;

- **water legislation:** the implementation of the Water Framework Directive (WFD) would give rise to specific issues in the context of the European Pollutant Release and Transfer Register Directives (EPRTR) and Industrial Emissions Directive (IED). It certainly appears that waste water treatment plants are listed within EPRTR, but not in the IED;

- **fisheries policy:** reporting obligations laid down in the context of the "landing obligations" have been identified as too demanding. The purpose of these obligations is to decrease the importance of unwanted catches and decrease discarding;

Cohesion policy and European Structural and Investment Funds

Both cohesion policy and the European Structural and Investment Funds have been directly noted as areas in which LRAs face particularly high administrative burdens and bottlenecks:

- **combination of different sets of rules:** it is generally necessary to follow a procedure under one of the European funds in addition to the European public procurement and state aid rules, given that public money is invested in all of these cases;

- **different definitions:** the definitions of eligible activities and strategic priorities under the European Regional Development Fund (ERDF) and the European Agricultural Fund for Rural Development (EAFRD) are different, despite addressing the same areas of need and despite the Common Provisions Regulation and the Common Strategic Framework;

- **reporting obligations:** final payments are frequently delayed for more than a year. Primarily, this delay is caused by the heavy reporting demands;

- **lack of harmonisation:** depending on the applicable legal regime, the administrative burdens for LRAs vary from one case to another. Likewise, the administration does not know whether it should apply the decisions of the government or the guidance of the European Commission (if they are aware of the latter) because they are not always consistent (as guidance is applicable to all Member States it is more general);

- **excessively demanding targets:** the control paradigm is at times in conflict with the aims of regional development policies, where LRAs often seek to support small enterprises;

- **too many audits:** numerous respondents complained about the abundance of audits in the field of cohesion policy and the European Structural and Investment Funds. Sometimes LRAs prefer not to work with European funds in order to avoid endless audits;

Energy

- **lack of harmonisation:** there is also a lack of harmonisation of energy legislation. In order to facilitate the implementation of EU law in this field by LRAs, it could be suggested that the EU adopt either a summary regulation or a summary paper which recaps each "activity" to which regime(s) apply;

- **overlap and excessively demanding reporting obligations:** numerous concerns have been raised with regard to the reporting obligations included in the Energy Efficiency Directive (EED), which lays down

stand-alone reporting obligations that are frequently inconsistent with more ambitious domestic reporting obligations.

Initiatives taken by LRAs to reduce the burden

- **Local and regional programmes:** this includes the organisation of information sessions and administrative restructuring with the identification of specific contact persons.

- **Campaigns to cut red tape:** examples of such initiatives include participation in meetings that aim to share best practices in terms of administrative burden reduction, as well as information sessions in order to inform the population, with a particular focus on the digitalisation of services.

- **Initiatives such as innovative e-government solutions:** these e-government solutions can take the form of collaborative programmes for e-administration. In other cases, e-government portals have been created. Finally, LRAs have also begun reflecting about the possibility for citizens to communicate formally with their administration using electronic tools.

- **Simplex (Portugal) and Easy.brussels (Belgium):** as further explained in this report, these are two successful initiatives to cut red tape and develop innovative e-government solutions.

Conclusions

This report shows that many of the burdens faced by LRAs primarily relate to the implementation of EU directives.

All LRAs do not possess the same capacity to face the bottlenecks and administrative burdens inherent in the implementation of EU legislation. The scale of the difficulties faced by the smaller administrations – explicitly at the level of local authorities – appears to be significantly higher than for those authorities with a stronger bureaucratic apparatus.

It appears to be particularly important to take into account the diversity of actors targeted by the EU legislation.

The bottlenecks identified above are arguably reinforced by:

- the existence of numerous legislative sources to be taken into account in the implementation of EU legislation;

- lack of stability in the EU's legislative framework, with changes in the legislation that are too recurrent and numerous;

- contradictions between EU legislation and guidance documents confuse LRAs in their implementation of EU legislation;

- the legislative status of guidance documents remains unclear. The numerous guidelines published by the European Commission create uncertainty for LRAs.

The guidance documents should be prepared on the basis of a user-driven approach and take the specific concerns of LRAs into account.

- Implementation or reporting obligations provided for at local or regional level do not always fit naturally with the same implementation or reporting obligations at national or European levels.

In order to decrease the burden generated by the reporting obligations, paper controls might be progressively replaced by on-line and more innovative forms of controls. Another possibility would be to replace systematic controls by a random system, at least in certain specific policy fields.

- In order for the programmes that aim to reduce the administrative burden to be a success, it appears that a multi-layered approach that also involves state authorities is crucial. Nevertheless, it remains difficult to assess the success of most of these initiatives owing to the absence of clear measures to evaluate the decrease in the administrative burden.

LRAs should exchange more on best practices in relation to the implementation of EU legislation. In this regard, both the European Commission and the CoR could have an important role to play in facilitating this exchange.

- As a final point, one should bear in mind that some EU laws are completely counter-productive owing to the rather heavy administrative burden they create for businesses, citizens, and/or administrations.

The drafting of EU legislation should take a more user-driven approach that takes into account the specific concerns of LRAs.

2. Introduction

In January 2016, the European Commission First Vice-President, Frans Timmermans, asked the Committee of the Regions (CoR) to submit an outlook opinion on The REFIT Programme: the local and regional perspective. Through this opinion, the CoR aims to help the European Commission understand the concerns of its members and receive suggestions on the requirements imposed by EU regulation and uncomplicated ways to achieve the same, or even better, results.

As a consequence, the CoR invited a team of researchers at KU Leuven – the authors of this report – to draft a study on the Regulatory Fitness and Performance (REFIT) Programme: EU regulatory bottlenecks and administrative burdens at local and regional level. In a preliminary phase, the project team prepared and sent out a questionnaire to civil servants working in regional and local offices as well as representations of local and regional authorities (LRAs) in Brussels, in order to gather information on bottlenecks and burdens faced by LRAs in relation to European Union (EU) law. The responses given by 90 respondents[1] coming from 14 different EU Member States form the primary source of information for this report.

The report presents the results of this survey in eight parts: it begins with an executive summary of the report, followed by a brief introduction and a section describing the methodology followed by the project team. Part four provides a general presentation of the results, followed by six case studies described in part five, which scrutinises the bottlenecks and burdens experienced in six particular policy areas which clearly emerged out of the responses to the survey as constituting the major areas in which the LRAs faced these difficulties in relation to EU law: state aid, public procurement, environmental protection, cohesion policy and European Structural and Investment Funds (ESIF), energy, and transport. Part six develops the initiatives taken by LRAs to reduce the burdens encountered in relation to EU law, and part seven presents conclusions in the form of a summary of the report together with a number of policy recommendations. Lastly, part eight contains the questionnaire sent to the LRAs in the report and provides further information on the methodology used.

[1] See chapter 4.1 below of the report for a detailed list of the respondents.

3. General aspects of methodology[2]

In a preliminary phase, the project team engaged in desk research in order to identify recent publications, reports and any other relevant information in the public domain, including academic literature and websites of national and regional parliaments. While doing so, the project team took particular care to avoid any interest-driven publications in this field in order to remain as objective as possible. On this basis, it drafted and sent out a detailed questionnaire (as reproduced in Annex 8.1 to this report) to the civil servants working in regional and local offices, including representations of LRAs in Brussels. These offices represent LRAs at European level and provide a link between LRAs and the EU.

The project team collected exactly 90 responses to the survey, with respondents coming from 14 EU Member States, as follows: Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Poland, Portugal, Spain, the Netherlands and the United Kingdom. On the basis of this information it selected six case studies, taking into account the diversity within Member States' administrative and governance structures, administrative culture, geographical location, etc. For each case study it examined the burdens faced by LRAs in regard to EU law and the measures taken to assess the effects of each burden. A number of initiatives taken by LRAs to reduce administrative burdens were also analysed and are presented in a separate part of this report. In general, given the limited response rate to the questionnaire, the report offers numerous examples raised by individual officials working in LRAs and seeks as far as possible to draw general trends in relation to bottlenecks and burdens faced by LRAs in relation to the implementation of EU legislation.

All websites mentioned in this report were last consulted in September 2016.

[2] More detailed information on methodological aspects may be found in Annex 8.2 to this report.

4. General presentation of the results of the survey

4.1. Policy areas

In addition to the six areas[3] in which most respondents identified particular concerns in relation to administrative burdens, several respondents also highlighted other policy areas, some of which were only mentioned occasionally. These include the area of food hygiene legislation[4] (Condeixa Municipality), which governs all the stages of production, processing, distribution and placing on the market of food intended for human consumption, and the open data and internet policies to be applied at city level (City of Antwerp). With regard to the latter, the EU Regulation on Data Protection appears to be of critical concern.[5] The EU must reconcile its efforts to ensure stringent protection of personal data in line with the ePrivacy Directive[6] and the General Data Protection Regulation[7] with the Digital Single Market Strategy. The Digital Single Market Strategy aims to improve access to digital goods and services, ensure the development of digital goods and services and use the Digital Strategy as an impetus for economic growth.[8]

The Auvergne Rhône-Alpes Region and two Portuguese municipalities identified the common agricultural policy (CAP), especially the second pillar of the CAP, as creating specific problems in the implementation of EU legislation. The second pillar of the CAP concerns the EU's rural development policy and is

[3] These six areas are state aid, public procurement, environmental protection, cohesion policy and European Structural and Investment Funds (ESIF), energy, and transport. The burdens encountered by LRAs in these areas will be examined in part 5 of this study.

[4] These rules include Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, OJ L 139; Regulation (EC) No 853/2044 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, OJ L 139; Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, OJ L 139; Directive 2004/41/3C of the European Parliament and of the Council of 21 April 2004 repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC, OJ L 157.

[5] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119.

[6] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L 201.

[7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119.

[8] See: https://ec.europa.eu/priorities/digital-single-market_en (EN).

financed by the European Agricultural Fund for Rural Development (EAFRD). As noted in a report published by the European Parliament, it is likely that some of these difficulties are generated by the vagueness of the EU's rural development policy objectives, which could lead rural development funds to finance projects that have no relationship with the EU's regional development objectives.[9] However, these respondents did not further develop these points in their responses to the survey.

Additionally, a number of cross-cutting policy areas, such as services, have been repeatedly identified as creating problems for the respondents working for LRAs, such as the Brussels Capital Region (Belgium), the Italian Autonomous Province of Bolzano and the Portuguese Municipality of Vila Nova de Famalicão.

Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, better known as the Bolkestein Directive,[10] appears to be of particular concern. The objective of this directive was to remove legal and administrative barriers to trade in services in order to make it easier for businesses and consumers to provide or use services in the internal market. This particular directive was adopted in 2006 and implemented by EU Member States by 28 December 2009. The implementation and transposition of the directive has caused several problems for LRAs, including the Brussels Capital Region, which mentioned the specific features of the Belgian context. The three regions and the three communities have to not only implement but also transpose directives. There is a *modus operandi* for the central state and the regions in this regard, but it may be particularly challenging for smaller regions, like the Brussels Capital Region, with less administrative capacity, to deal with the transposition of very complex directives such as the Directive on services. In this instance, the region had to hire a special team in order to be able to transpose the directive. Other LRAs also lamented the complexity of the task of transposing such directives.

In a similar vein, this particular respondent also pointed to two directives as having caused particularly high administrative burdens for the region. These two direct examples are Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks,[11] which seeks to reduce the costs of high-speed electronic communications networks in order to facilitate and provide

9 Jan Douwe Van Der Ploeg, "Rural Development and Territorial Cohesion in the New CAP", Detailed Briefing Note for the Directorate General for Internal Policies, 2012, p. 7, available at http://www.arc2020.eu/wp-content/uploads/2012/03/RD-briefing-note-Ploeg.pdf (EN).

10 OJ L 376.

11 OJ L 155.

incentives for their roll-out, which entered into force on 12 June 2014; and Directive 2013/37/EU of the European Parliament and of the Council of 26 June 2013 amending Directive 2003/98/EC on the reuse of public sector information,[12] which provides a common legal framework for a European market for government-held data and entered into force on 17 July 2013.

4.2. Bottlenecks

The questionnaire sent by the project team to the representatives of LRAs in Brussels and officials working in LRAs in the EU generally suggested a number of bottlenecks to the respondents in order to facilitate their task in responding.

These pre-selected bottlenecks were the following:

- is there an overlap between different EU legislation?[13];
- is there a lack of harmonisation of different EU legislation?[14];
- does different EU legislation employ different terms/definitions for specific concepts?[15];
- are the reporting obligations laid down by EU legislation too demanding?[16];
- do the reporting obligations laid down by different EU legislation overlap?[17];
- does the different EU legislation set excessively demanding targets?[18];
- are you confronted with too many audits from the EU?[19].

In addition to the bottlenecks concerning the six policy areas examined in the case studies, several other bottlenecks and difficulties were reported by the respondents. In this regard, it is interesting to note that numerous respondents considered that the reporting obligations linked to EU legislation sometimes overlap with each other. In this respect, the Dutch Provinces pointed out that the reporting obligations arising from the various EU directives often overlap because the reports are designed differently, and the same data has to be submitted in various different ways, according to the differing reporting

12 OJ L 175.

13 This was not a burden according to 30 respondents.

14 This was not a burden according to 26 respondents.

15 This was not a burden according to 29 respondents.

16 This was not a burden according to 27 respondents.

17 This was not a burden according to 32 respondents.

18 This was not a burden according to 23 respondents.

19 This was not a burden according to 27 respondents.

structures. In the views of the Brussels Capital Region and the Åland Regional Government, this is particularly true in the area of environmental policies. The overlap is not limited to directives, as highlighted by the Finish Regional Government of Åland, and it is particularly problematic in the case of small administrations (including that of the Government of Åland).

In addition to the seven bottlenecks pre-selected in the questionnaire, the respondents had the possibility of adding another bottleneck or several others in an open question. Out of the 90 responses given to the questionnaire, 19 respondents did not identify any other bottlenecks than the ones listed in the questionnaire.

Among the other responses, one concern was particularly highlighted by the respondents: LRAs' difficulty in implementing directives. In this regard, an official working for the Government of Åland in Finland explained that it is a challenge for a small administration to be able to implement directives which are often very detailed and not suitable for a small region. An official employed by the Brussels Capital Region in Belgium further explained that each directive defines its proper concepts, which complicates the task of transposition. According to the Podlaskie Region (Poland), difficulties arise when trying to implement EU laws that do not have a direct effect, such as directives, where public administration institutions cannot invoke the provisions of the directive when there is no national law implementing it.

Additionally, the region pointed to a number of difficulties that arise when it has to follow non-binding EU documents such as recommendations and guidelines with regard to third parties. Civil courts do not take into account non-binding EU documents. Thus, in the case of disputes brought by citizens before national jurisdictions against LRAs in relation to such documents, a certain degree of confusion may arise as to the correct interpretation to be given to these documents.

Related to this, an official employed by the Brussels Capital Region raised the issue that some directives may contain overly precise provisions, which may be similar to those of regulations, while these sometimes concern areas in which one should "harmonise (directive) rather than standardise (regulations)". This respondent mentioned the example of the Energy Efficiency Directive (EED),[20] which is further discussed below.

20 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, Text with EEA relevance, OJ L 315.

Another bottleneck that was noted by a respondent concerns the problem of translations. According to this respondent, working for a Polish region, such problems frequently arise when some EU laws are inaccurately translated into Polish. Some mistakes in translations can significantly alter the meanings of the regulations. Likewise, difficulties arise when there is no translation available for the non-binding legal documents, such as recommendations, that are important for understanding binding regulations. In this case the employers of the Marshals Office have to translate the legal documents. However, unofficial translations are not highly regarded and can be questioned or challenged by other parties involved in the case for the sole reason that they are not official, notwithstanding the intrinsic quality of the translation produced by the regional or local civil servant. Documents that specify how certain directives should be implemented, such as guidelines and other guides (e.g. the Guide on Research and Innovation Strategies for Smart Specialisation[21] or the guide relating to the General Block Exemption Regulation (GBER)[22]) are often available only in English, which makes it more difficult for LRAs to apply them. In order to remove this burden from LRAs, the EU should offer a systematic and official translation of all these documents in every EU official language.

A respondent representing the Dutch Provinces reported a problem of definitions in certain parts of EU legislation. For instance, the description of the term "hydrocarbon" varies from one directive to another.[23]

A respondent working for the Belgian City of Antwerp raised the issue that urban authorities are frequently unaware of the impact of (future) EU legislation on urban policies. In this regard, this respondent welcomed the tool of urban impact assessments (at the moment still in a pilot phase) and more generally welcomed the territorial impact assessments. However, in relation to these territorial impact assessments, a respondent from Scotland deplored the fact that local and regional expertise is not sufficiently included in these particular assessments. From his standpoint, the respondent noted two causal factors: first, the Commission often resorts to private consultants rather than working directly with LRAs to conduct these assessments; second, there is no sufficient engagement by ministries and regional authorities in order to develop the territorial impact assessments, even when this information is readily available.

21 This guide has been prepared by the services of the European Commission in May 2012 and is available at http://s3platform.jrc.ec.europa.eu/documents/20182/84453/RIS3+Guide.pdf/fceb8c58-73a9-4863-8107-752aef77e7b4 (EN).

22 This guide was also drawn up by the European Commission in March 2016 and is available at http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf (EN).

23 Huis van de Nederlandse Provincies, Dutch provinces for better EU regulation (2015), available at http://ec.europa.eu/smart-regulation/refit/refit-platform/docs/submissions/dutch_provinces_en.pdf (EN) p. 11.

Finally, a respondent from the Southern Region of Denmark raised the following concern: as part of its membership of the steering committee of the Interreg 5A-programme Deutschland-Denmark, the Region of Southern Denmark conducted a number of interviews among project holders regarding the associated level of administration. The primary results highlight the complex application and budget forms, the repetitive and unrelated/irrelevant questions, the demands for unnecessarily detailed planning of future events and budgets, etc. These administrative bottlenecks seemingly have a discouraging effect on both potential and current project holders.

4.3. Measures of the burden of EU legislation

The questionnaire also included a number of questions relating to measuring of the burden of EU law by LRAs, as follows:

- Do you measure the burden of EU legislation that you apply?
- Do you have any reliable data on the burden of EU legislation on citizens?
- Do you have any reliable data on the burden of EU legislation on businesses?
- Do you have any reliable data on the burden of EU legislation on administrations?

It should be critically noted that out of the 90 responses received to the survey, the majority of the respondents skipped these questions relating to measuring of the burden of EU legislation.

Out of the 50 respondents which actually replied to these questions, 20 LRAs emphasised that they do not have well-defined ways of measuring the burden. These include administrations in Austria, Belgium, Denmark, Germany, Ireland, Italy, Poland, and Portugal.

Some other entities do measure the burden of EU legislation in an *ad hoc* way. These entities usually measure the burden created by definite policies depending on the specific characteristics of their entity. For instance, a Spanish municipality reported that it primarily measures the burden of EU legislation with regard to issues related to the management of European funds, including the European Regional Development Fund (ERDF). According to the Brussels Capital Region, measuring can be notably useful to decide on the human resources needed to meet reporting obligations.

The Dutch Provinces do not do it in a systematic way for all policies, but always measure the burden when it comes to Structural Funds. The same applies to the Lithuanian Siauliai Municipality, which systematically measures the burden of EU legislation on businesses. The Flemish Region also measures the burden on an *ad hoc* basis, and in some sectors more than others. On a sectoral basis, the Flemish Region attempts to collect data on the administrative burden through various means, including the Databank of the Flemish Parliament (for the citizens' burden), the website https://www.vleva.eu (for businesses), and the "*Dienst Wetsmatiging"* (for the administration).

Although they measure various burdens, most entities do not have clear and accessible data on these measures.

However, other LRAs measure the burden created by EU legislation in a fairly systematic way. These include the Austrian Regional Government of Salzburg, the Portuguese Municipalities of De Redondo and Ferreira Alentejo and the Spanish Region of Galicia.

According to a respondent from the Salzburg Government, the administrative burden relating to processing subsidy requests has increased enormously (the requests have increased from documents of 3 pages to documents of 10 pages, now excluding annexes). Documentation that aims to assist the administration in the processing of the request may sometimes contain up to 40 pages.

The Salzburg government has reliable data on the burdens imposed on citizens. The latter need more advice from representatives of their interests and ask agencies numerous questions. Given the considerable burdens, many citizens refrain from submitting requests, which in turn results in a certain frustration with regard to the EU. Because of the complexity and length of the procedure, the potential for errors has also increased, which again translate into a certain defiance towards the European Commission. However, the Salzburg administration does not have any web links available to access this data because such documentation is absolutely impossible to assemble, given the constraints of both time and resources.

Similarly, the burden on businesses has given rise to substantial demand for advice from representatives of interests, and many questions are addressed to the agencies in this regard.

As to the burden on administrations, there is more work for staff in relation to processing subsidy requests and in replying to the questions of recipients. The number and length of procedural requests linked to the approval and the

examination of requests are continuously increasing; this has also increased the risk of errors.

Another LRA systematically measuring the burden of EU legislation is the Spanish Region of Galicia. To measure the burden, this region uses a specific website (www.pescadegalicia.gal), which serves as a communication platform for citizens, businesses and the administration.

5. Case studies

5.1. State aid

The policy area of state aid in relation to LRAs is mainly governed by the GBER,[24] in addition to the Guidelines on Regional State Aid for 2014-2020 (2013/C 209/01) established by the Commission. These EU provisions and the entire EU system of state aid have caused considerable burdens for LRAs in terms of overlap, problems of definitions, lack of harmonisation and excessive reporting obligations.

A. General

Unless otherwise provided for in the Treaties, Article 107(1) of the Treaty on the Functioning of the European Union (TFEU) prohibits aid granted by Member States affecting trade between these countries, and distorting or threatening to distort competition by favouring certain undertakings or the production of certain types of goods. In order to control this aid, Member States are obliged to notify the Commission in advance of any plan in accordance with Article 108(3) TFEU. Following the adoption of the "Enabling Regulation" by the European Council,[25] the European Commission defined exemptions from this principle, making certain categories exempt from prior notification. One of these exemptions concerns regional aid intended to support economic development and job creation.

A number of specific conditions of compatibility of regional aid with the common market are listed in the GBER,[26] in addition to further guidance provided by the Commission in its Guidelines on Regional State Aid for 2014-2020 (2013/C 209/01).

The responses received to the survey revealed numerous concerns raised by officials in various regional authorities across Europe, particularly in relation to European rules on state aid. These rules are mainly established in regulations and have a direct effect, which implies that they are directly implemented by LRAs without having to be first transposed into national legislation by the national authorities, as is the case for directives.[27] Hence, it is the responsibility

24 Commission Regulation (EU) No 651/2014 of 17 June 2014.

25 Council Regulation (EC) No 994/98 of 7 May 1998.

26 Commission Regulation (EU) No 651/2014 of 17 June 2014.

27 Huis van de Nederlandse Provincies, "Dutch provinces for better EU regulation" (2015), available at http://ec.europa.eu/smart-regulation/refit/refit-platform/docs/submissions/dutch_provinces_en.pdf (EN) p. 36.

of LRAs to correctly identify, interpret, and apply the European rules governing state aid.

According to the responses received to the survey, these collective steps are proving to be problematic for several LRAs. First, with regard to identifying rules, these rules on state aid are spread among various documents including regulations, decisions, guidelines, orientation notes, and announcements. This multitude of sources constitutes a bottleneck for LRAs in the identification of rules, as well as complicating the task of interpreting them.

Indeed, as far as the interpretation of these rules is concerned, one respondent repeatedly stated that the multitude of sources of rules on state aid jeopardised the task of interpretation, notably in relation to the evaluation of compensation from public funds for services of general economic interest. Furthermore, this respondent raised doubts with regard to the interpretation of the GBER (e.g. Article 1 (5)(a) along with the fact that the main aim of the operational programmes is to support the economic development of the regions. More generally, another respondent reported that numerous guidelines and orientation notes have been published by the European Commission which have no legally binding value yet attempt to assist LRAs in their task. However, some confusion stems from the fact that although these orientation notes have no legally binding value, the controllers nevertheless expect LRAs to apply them.

As to the application of the European rules on state aid, one respondent mentioned that the obligation to participate in a process of official nomination for management authorities makes it more difficult to start the programming. Once the programme is launched, several respondents condemned the increase of the number of controls to be carried out during the implementation phase. In this regard, an official working for a Polish region said that he was experiencing difficulties in the application of state aid regulations, and more particularly with regard to the issue of carrying out the state aid test properly, but also encountering complications with the application of regulations regarding services of general economic interest with respect to the application of Commission Regulation No 651/2014 of 17 June 2014.[28]

B. Overlap

According to a civil servant working in a Polish region, the structure of the legislative package for 2014-2020 is very complicated. Rules regarding the same process appear multiple times across multiple documents, and sometimes within

28 Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187/1.

a single regulation (1303/2013). Some aspects are further clarified or more specifically explained in multiple executive or delegated regulations, and can be subject to approval under other procedures. However, in order to find out how specific rules should be applied, multiple legal documents have to be consulted.
The activities of research organisations are described in the Communication from the Commission: Framework for State Aid for Research and Development and Innovation. Additionally, Regulation No 651/2014 of 17 June 2014 (GBER) again sets some rules in this field. For example, the incentive effect is more broadly specified in the Guidelines on Regional State Aid for 2014-2020 than in Regulation No 651/2014 of 17 June 2014 (GBER).

Typically, it was reported by several respondents that, in certain cases, the rules governing state aid may contradict the Regulation on the European Structural and Investment Funds, notably in relation to the specific rules on simplified costs.[29] Projects supported by the ESIF under cohesion policy are required to comply with EU law.[30] Thus, Member States have to ensure that their aid schemes comply with the rules on state aid, including the rules on regional state aid.

C. Different definitions

The lack of clarification of EU rules on state aid was discussed during a seminar organised by the Croatian Regions' office on 27 April 2016 on Better Regulation for SMEs. According to presentations by three European Entrepreneurial Regions – Flanders, Brandenburg, and Catalonia – the "state aid rules and public procurement rules, especially the fact they are not clear enough for SMEs, discourage SMEs from using EU funds more."[31]

In addition to this lack of clarity, a respondent from a Polish region considered that there is a lack of definitions for many terms used in the GBER,[32] such as the conventional production plant (Article 46 (2)), the dedicated infrastructure (Article 56 (7)), and the claw-back mechanism (Article 56 (6)). Furthermore, this respondent noted that there are various definitions for some regulatory concepts concerning the EU funds, and in regulations on state/regional aid, such as the "durability of operations" or the "start of works". Similarly, various definitions can be found in relation to the priority or programme in the 2014-2020 legislative package.

29 These two concerns were specifically raised by a French region. On the simplified costs, see European Commission, Guidance on Simplified Costs Options: Flat rate financing, Standard scales of unit costs, Lump sums (under Articles 67 and 68 of Regulation (EU) No 1303/2013 and 14 of Regulation No 1304/2013) EGESIF_14-0017, 11 June 2014.

30 Article 6 of Regulation (EU) No 1303/2013 of 17 December 2013.

31 http://www.croatianregions.eu/405-seminar-better-regulation-for-smes (EN).

32 Commission Regulation (EU) No 651/2014 of 17 June 2014.

On a more specific note, it was reported that different definitions were given to the concept of "innovation" by DG Competition and DG Regional Policy. These contrasting definitions for one single concept by two different Directorates General may lead to a certain degree of confusion for the LRAs. The different Directorates General should strive to align the definitions used in state aid and regional policy rules, including that of the concept of "innovation", in order to resolve this issue.

Finally, the Polish respondent pinpointed the problem of unavailable Polish translations of documents specifying how certain directives should be implemented, including the Guide on Research and Innovation Strategies for Smart Specialisation[33] and the guide relating to the GBER.[34]

D. Lack of harmonisation

All the concerns expressed by the respondents related to incompatibilities with regard to the justification of expenses between the state aid regimes and ESIF regimes. Numerous respondents clearly criticised the fact that the options for simplified costs are not compatible with certain state aid regimes, for which all expenses have to be fully justified.

Furthermore, one respondent stated that the justification of expenses is much easier when the European Commission launches its own calls for projects than with regard to other operational programmes. For instance, Horizon 2020 does not apply the rules on state aid, while the same project proposed under the ESIF will be required to comply with the rules on state aid.

Finally, it has been reported that the classifications of relations may vary for the purposes of *de minimis* aid[35] and state/regional aid, which can prove problematic when there are both types of aid in a single project.

E. Reporting obligations are too demanding and/or overlap

As of 1 July 2016, Member States are required to publish for each state aid award exceeding EUR 500 000 the identity of the beneficiary, the amount and

33 This guide was drawn up by the European Commission in May 2012 and is available at http://s3platform.jrc.ec.europa.eu/documents/20182/84453/RIS3+Guide.pdf/fceb8c58-73a9-4863-8107-752aef77e7b4 (EN).

34 This guide was also drawn up by the European Commission in March 2016 and is available at http://ec.europa.eu/competition/state_aid/legislation/practical_guide_gber_en.pdf (EN).

35 Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, OJ L 352/1.

objective of the aid and the legal basis on a "Transparency Award Module" (TAM) accessible on the Commission's and Member States' websites.

Furthermore, the European Commission is now asking for all state aid to be reported to the Commission. Previously, only state aid exceeding a certain amount had to be published and reported to the Commission. One respondent from a Belgian region complained that this new system forces all the departments concerned, including at regional level, to report all aid to enterprises and associations.

In general, several respondents, including the Austrian Regional Government of Salzburg, the Belgian Brussels Capital Region, the French Region of Auvergne Rhône-Alpes and the Italian Autonomous Province of Bolzano, raised concerns about the fact that the reporting obligations linked to state aid were too burdensome.

For instance, an official from the Brussels Capital Region criticised the fact that administrations have to report yearly on information that has sometimes already been transmitted, even in relation to aid exempted from notification obligations. Additionally, according to the Italian province, monitoring of the amounts of state aid on the basis of the State Aid Reporting Interactive tool (SARI) would not work well.

An additional example of the heavy administrative burden related to the reporting obligations was given by an official working in the Salzburg Regional Government, who said that it is hardly understandable why the list of single funding recipients has to be published in the cases of exempt support measures. In agreement with Article 9 of Regulation 702/2014 on the obligation to publish state aid,[36] all the recipients have to be mentioned in the Transparency Award Module as part of their transparency obligations.[37] It remains unclear from the perspective of the Salzburg Government what happens with this data, and what the actual added value is for the European Commission in receiving this information. Nevertheless, it is obvious that it adds a significant administrative burden for the institutions responsible for the reporting.

Finally, this particular respondent also considered that reporting state aid in the SARI programme overlaps with the obligations related to the WTO on subsidy levels.

36 Commission Regulation (EU) No 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, OJ L 193.

37 See Commission staff paper on encoding information in the Transparency Award Module for State aid. http://europa.eu/rapid/press-release_IP-14-588_en.htm

5.2. Public procurement

A. General

Public procurement is an important policy area at EU level. Every year, as many as 250 000 public authorities across the EU spend as much as 14 percent of their GDP on the purchase of services, works, and supplies.[38] Public procurement has to abide by strict rules set out in three 2014 directives. By April 2016, Directive 2014/24/EU on Public Procurement[39], Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors[40] and Directive 2014/23/EU on the award of concession contracts had to be assimilated into Member States' national legal systems.[41] LRAs are frequently involved as contracting parties in public procurement, and it appears that public procurement policies keep creating concerns for a number of these entities. In this respect, Flanders, Scotland, the Salzburg Government, the Autonomous Province of Bolzano and various municipalities such as the City of Ostend, the City of Vienna and the Municipality of Amarante (Portugal) all referred to specific problems linked to the EU directives in the area of public procurement.

While it is still relatively early to assess the impact of the 2014 legislative package on public procurement, given the fact that these Directives had to be transposed by April 2016, it seems to be important for the EU to reflect upon its public procurement policies in light of the better regulation agenda. In the words of a councillor of the City of Hradec Kralove, "the procurement market represents a potential of 2 trillion euro of EU added-value. At a time when our citizens are increasingly feeling disengaged from the EU, we cannot afford not to make public procurement part of our better regulation agenda".[42]

Furthermore, the transposition of the 2014 directives – more particularly Directive 2014/24/EU – was not an easy process for many LRAs. The difficulties are reportedly linked to the frequent changes in the EU's public procurement legal framework, as well as the heaviness of the 2014 legislative

38 See https://ec.europa.eu/growth/single-market/public-procurement_en (EN).

39 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94.

40 Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, OJ L 94.

41 Directive 2014/23/ EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (Text with EEA relevance), OJ L 94.

42 The European Conservatives and Reformists at the Committee of the Regions, "The EU must make public procurement part of its better regulation agenda and better involve local government", 3 June 2016, available at http://web.cor.europa.eu/ecr/news/Pages/EU-must-make-Public-procurement-part-of-its-better-regulation-agenda-and-better-involve-local-government.aspx (EN).

package on public procurement. As mentioned by a civil servant from Scotland, "the intricate new directives measure 374 pages in the Official Journal, whereas the previous procurement directives comprised 240 pages". Constant reforms at the European level have been translated at national level into a proliferation of national laws in the field of public procurement policy. According to the Italian Anti-Corruption Authority, as many as 22 legislative acts have been adopted to transpose the European reforms into national law since 2009.[43]

In terms of more specific bottlenecks, it appears that LRAs are encountering issues of overlap between EU legislation, problems of definition, and overlap in reporting obligations.

B. Overlap

The existence of overlaps within current legislation was reported by officials from varying LRAs. The area of public procurement was described as overlapping and spread throughout several pieces of legislation that follow no logical reasoning but are rather the result of distributive politics and principal agent dynamics. The lack of coherence and the absence of a recipient-oriented approach therefore partly explain the difficulties of LRAs in implementing EU legislation in the area of public procurement.

In addition, overlaps within public procurement laws are exacerbated by overlaps with other legal areas (i.e. competition, tax, and state aid) "as more private companies are judged to be 'contracting authorities' for the purpose of procurement rules, particularly across the EU".[44] The overlap between competition law and public procurement law has been widely recognised, especially when the 2014 public procurement package was adopted. One of the primary purposes of the new directives was indeed to strengthen competition in the public procurement sector by removing some of the restrictions the public buyer was facing, and to use some market mechanisms to their advantage.[45] From a competition law perspective, it is interesting to note that the 2014 directives might have a counterproductive effect.

> "While the new EU directives try to increase competition in the public procurement setting by freeing the public buyer from restrictions that were considered to limit its ability to exploit market-like mechanisms in the procurement process, they also increase the discretion of the public

43 Efforts to address problems with public procurement in EU cohesion expenditure should be stepped up, p. 22.

44 Who's Who Legal, "Research: Trends & Conclusions: Government Contracts", 2014, available at http://whoswholegal.com/news/analysis/article/31623/research-trends-conclusions/ (EN).

45 Albert Sánchez Graells, Public Procurement and the EU Competition Rules, 2nd Edition, Bloomsbury Editing, 2015.

> buyer in running the system and try to leave room for increased administrative efficiency in public procurement".[46]

Therefore, the paradox is that the enhancement of administrative flexibility and the decrease in administrative burden might also be counterproductive from the perspective of the European competition policy.

C. Different definitions

Additionally, problems with definitions of important concepts from public procurement policy have also been reported. A civil servant from Scotland referred more particularly to the different definitions provided by the public procurement legislation and within the European Commission's Public Procurement Guidance for Practitioners.[47] It was reported that the Guidance was developed using the old directive, while the 2014 directives had already been approved. Although local authorities' expertise was easily available, this developed mainly via consultation of managing authorities. The inconsistencies that exist between the Guidance document and the directives prove that no "robust final user driven approach was taken to its development".

The problems of definitions within the EU public procurement policies emerge when contracting authorities do not endorse the same interpretation of significant concepts. The Court of Auditors therefore uses the example of Italy, where contracting authorities regularly do not have the same definition of the concept of "unforeseeable event" when it is used to justify the modification of a contract without going through the rules laid down by the public procurement legislation.[48] Directive 2014/24 defines the notion of "unforeseeable circumstances" in the following way:

> "Circumstances that could not have been predicted despite reasonably diligent preparation of the initial award by the contracting authority, taking into account its available means, the nature and characteristics of the specific project, good practice in the field in question and the need to ensure an appropriate relationship between the resources spent in preparing the award and its foreseeable value".

46 Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, Article 109.

47 European Commission, Public Procurement Guidance for Practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds, 2015, available at http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_public_proc_en.pdf (EN).

48 European Court of Auditors, "Efforts to address problems with public procurement in EU cohesion expenditure should be intensified", Special Report, 2015, p. 24, available at http://www.eca.europa.eu/Lists/ECADocuments/SR15_10/SR_PROCUREMENT_EN.pdf (EN).

As a consequence, it is possible that some national authorities consider that the changes to a contract do comply with the national – and the *de facto* – European rules, while the audit authorities and/or the European Commission will consider the procedure followed to be irregular.[49] According to the European Commission, the 2014 legislative package should nevertheless decrease the number of errors linked to the problems with definition.[50] In fact, the new governance mechanisms, including the obligation to send a monitoring report to the European Commission every three years, should decrease the number of errors made in the interpretation and implementation of the Public Procurement Directives.[51]

D. Reporting obligations overlap

Breaches of public procurement rules constitute one of the principal sources of irregularities in the implementation of projects co-financed by the ESIF. Public procurement law and the rules that govern the ESIF are undoubtedly extensively interconnected. According to the Court of Auditors, almost half of the transactions in the context of the ESIF involve public procurement.[52] It is with this in mind that the European Commission published a Guide for Practitioners that should help the contracting authorities avoid the most common infringements of public procurement legislation in both the programming and implementation of projects financed by the ESIF.[53] Given the diversity of public procurement laws within the EU, it is not uncommon to have overlaps in the reporting obligations between the regional, national, and European levels in the cases of projects co-financed by the ESIF. In this sense, both the civil servant from Scotland and the official representing the Dutch Provinces referred to the different reporting obligations that exist for The ESIF and those in the area of procurement policies.

The Vienna Municipality also emphasised the numerous new restrictions and requirements for the contracting authorities introduced by the 2014 directives. The task of monitoring, as well as providing free of charge, information and guidance on the interpretation and application of EU public procurement laws has been delegated to the Member States. It was reported that the new legislation is particularly demanding in terms of audit obligations and the

49 Ibid., p. 24.

50 European Commission Memo: "Revision of Public procurement Directives - Frequently Asked Questions", 15 January 2014, available at http://europa.eu/rapid/press-release_MEMO-14-20_fr.htm (EN).

51 Ibid.

52 Court of Auditors, supra, p. 15.

53 European Commission, "Public Procurement Guidance for Practitioners on the avoidance of the most common errors in projects funded by the European Structural and Investment Funds", 2015, available at http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/guidance_public_proc_en.pdf (EN).

bureaucratic burdens in relation to carrier settlement increase for both the recipients and the administration. The amount of time needed for processing subsidy requests has increased from funding period to funding period. The number of requests has also consequently increased. Because of the multi-faceted controls (i.e. national authorities, European Commission, Court of Auditors), it has taken more time to assemble all the documentation for these controls than to process the subsidy request. Some specific examples of additional burdens for LRAs created by the 2014 directives relate to the fact that LRAs now have to justify a decision not to divide a contract into lots. In addition, the minimum yearly turnover that economic operators are required to have may not exceed twice the estimated contract value. Finally, the limit for changes to works contracts is set at a mere 15 percent of the initial contract value.

A final point that should be emphasised here is the fact that guiding rules published by the European Commission can sometimes be misleading. The Walloon Region reported that the numerous guidance documents published by the European Commission create uncertainty for LRAs, causing confusion and uncertainty over whether they should abide strictly by the national legislation or follow the guidance of the European Commission. The guidance documents that are supposedly applicable to all Member States are not always consistent with the national rules owing to their abstract and general nature.

E. Other bottlenecks: low threshold

The Vienna Municipality further emphasised that the threshold levels for the application of the Public Procurement Directives are not adequately adapted. The very low threshold – given the absence of adaptation in line with the inflation rate – creates an additional administrative burden as more public-private contracts fall under the rules of the EU Public Procurement Directives. The fact that threshold levels remained unchanged can be explained by the existing EU commitments under the World Trade Organization's Agreement on Government Procurement (GPA). Nevertheless, the European Commission committed to reviewing the impact of the thresholds on the internal market by 2019. However, this concern is not new. The low threshold values had already been condemned by the CoR in its Opinion on the Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts.[54] At the time, the CoR identified one significant problem concerning the procurement of services "since transaction costs are often

54 Opinion of the Committee of the Regions on the Proposal for a Directive of the European Parliament and of the Council on the coordination of procedures for the award of public supply contracts, public service contracts and public works contracts, OJ C 144.

relatively high in relation to the value of the contract".[55] In this context, the CoR advised the European Commission to take the necessary measures to renegotiate the EU commitments under the GPA.[56]

5.3. Environmental protection

A. General

In the area of environmental protection, various regions, provinces and cities across the EU pointed out the difficulties they encounter when implementing EU legislation. In terms of more specific policy areas, problems in the area of nature protection and environmental sustainability were flagged by several Austrian respondents. Another problematic piece of EU legislation reported by the respondents was the Waste Management Directive. Finally, a respondent pointed to sectoral regulations, such as the European Pollutant Release and Transfer Register (EPRTR) and the Industrial Emissions Directive (IED), as directives that are difficult to implement correctly, particularly in a context where the lists of activities are neither harmonised nor coherent. The EPRTR Regulation "is the Europe-wide register that provides easily accessible key environmental data from industrial facilities in European Union Member States".[57] The IED Directive "is the main EU instrument regulating pollutant emissions from industrial installations".[58] The specific problems linked to the Habitats and Birds Directives and the Waste Management Directives are analysed at length below.

Two LRAs reported that the EU environmental legislation included excessively demanding targets. This would be particularly true in the policy area of species conservation. The application of the Habitats and Birds Directives results, for example, in significant procedural delays. In this connection, Article 6.3 of the Habitats Directive[59], which regulates the assessment and authorisation of plans and projects potentially affecting Natura 2000 sites, has been substantially criticised by respondents because it would place "a major burden on Europe's economic development, causing substantial delays in permit procedures and

55 Ibid.

56 Ibid.

57 See http://prtr.ec.europa.eu/#/home (EN).

58 See http://ec.europa.eu/environment/industry/stationary/ied/legislation.htm (EN).

59 Article 6.3 of the Habitats Directive reads as follows: "Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public".

generating a high administrative and financial workload for administrators and economic operators".[60]

It was additionally reported that "EU legislation makes demands that are usually suitable for a big Member State, not for a small region". In the area of waste legislation, a civil servant from Scotland additionally reported that the EU was setting excessively demanding targets within this specific policy area. According to one of the respondents, the reflection that the EU started on the reform of its waste legislation tabled in 2014 and further revised in 2015 does not take into account the difficulties linked to the implementation of the 2008 Waste Framework Directive.[61] Many of the objectives identified in this particular directive seem to not have been met, and the reformed waste legislation has apparently failed to integrate or acknowledge well-known implementation problems. It is certain that these concerns on the implementation of the waste legislation will not be met "by setting even higher targets or allowing for some temporary derogations". The European Commission's proposals, as further defined in the Communication details and laying down an Action Plan for the Circular Economy[62], certainly set higher targets for the recycling of municipal waste, packaging waste and the quantity of waste that can be sent to a landfill.[63]

The burden caused by excessively demanding reporting obligations appears to be especially significant in the area of environmental protection. This particular burden was clearly reported by the Dutch Provinces. In the area of environmental legislation, the Birds and Habitats Directives as well as their derogations, the Convention on Biological Diversity, the Bern Convention, the Convention on Wetlands (also known as the Ramsar Convention) and the Convention on Migration Species, all incorporated excessively demanding reporting obligations. It is worth mentioning that the European Commission undertook a consultation called "streamlining monitoring and reporting obligations in environment policy" between November 2015 and February 2016. The purpose of this consultation was to ensure that "environmental monitoring and reporting is fit for purpose: delivering the right information, at the right time

60 European Commission Study on evaluating and improving permit procedures for Natura 2000 requirements under Article 6.3 of the Habitats Directive 92/43/EEC, October 2013, p. 5, available at http://ec.europa.eu/environment/nature/natura2000/management/docs/AA_final_analysis.pdf (EN).

61 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance), OJ L 312.

62 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Closing the loop - An EU action plan for the Circular Economy, COM(2015) 614 final, 2 December 2015.

63 House of Commons of Great Britain, Summary and Committee's conclusions on the EU legislation on Waste, 20 January 2016, available at http://www.publications.parliament.uk/pa/cm201516/cmselect/cmeuleg/342-xix/34204.htm (EN).

and in an efficient way". [64] As far as the environment is concerned, the results of the European Commission consultation revealed that two Member States emphasise the demanding nature of the reporting process for noise. Respondents with knowledge of water policy were divided on whether existing information requirements were appropriate, or excessively demanding. On this point, the Brussels Capital Region pointed out that the ETS Large Combustion Plants rules resulted in a disproportion between the reporting obligations and the few installations the region has to deal with.

B. Birds, and Habitats and Species Directives

A typical example of specific environmental policy in which European regions, provinces, and cities are encountering some significant bottlenecks is the Habitats and Birds Directives, which are at the heart of Europe's nature conservation policy.

More precisely, Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds[65] and Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna[66] raise specific concerns for LRAs.

A civil servant from the Vienna Municipality administration pointed to the difficulties he encounters in the implementation of the Habitats and Birds Directives, specifically in terms of the protection of species, which arise due to the ambiguous wording used in specific articles. These include:

- Article 12 of the Habitats Directive and Article 5 of the Birds Directive, which both make reference to the term "deliberate". Article 5 of the Birds Directive requires Member States to take appropriate measures against the "deliberate killing or capture" (a), "deliberate destruction" (b) and "deliberate disturbance" (d) of protected bird species as defined in Article 1 of the directive. Article 12 of the Habitats Directive prohibits "all forms of deliberate capture or killing" (a), "deliberate disturbance of these species" (b) and "deliberate destruction" (c) of the animal species listed in Annex IV of the Directive. In accordance to the Guidance Document on the Strict Protection of Animal Species of Community Interests under the

64 See http://ec.europa.eu/environment/consultations/reporting_en.htm (EN).

65 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservancy of wild birds, OJ L 20.

66 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora OJ L 20.

Habitats Directive 92/43/EC,[67] the term "deliberate" includes intent, which is different from the interpretation provided in the national legislation. Based on the case law of the European Court of Justice, the Guiding Document provides the following definition of "deliberate" actions: "actions by a person who knows, in light of the relevant legislation that applies to the species involved, and the general information delivered to the public, that his action will most likely lead to an offence against a species, but intends this offence or, if not, consciously accepts the foreseeable results of his action".[68] The level of intent should be more clearly defined in both the Habitats and Birds Directives;

- Article 16 of the Habitats Directive states that Member States may derogate from some of the provisions of the directive (i.e. Article 12) if there is no satisfactory alternative, and if the derogation is not detrimental to the protection of the species, with the purpose of "protecting wild fauna and flora and conserving natural habitats" (a), "to prevent serious damage to crops, livestock, forests, fisheries, and water (…)" (b), "in the interests of public health and public safety" (c), "for the purpose of research and education" (d) or "to allow (…) the taking or keeping of certain specimens of the species" (e). According to the Guidance Document on the Strict Protection of Animal Species of Community Interests under the Habitats Directive, the measures that ensure the continued ecological functionality of breeding sites ensure compliance with Article 12(1) and do not require derogations as listed in Article 16. Article 12(1) states that "Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex (IV) (a) in their natural range".[69] According to the Vienna Municipality, more legal certainty should be established here by including this concept within the directive. In addition, the concept of "alternatives" mentioned in Article 16 remains unclear, because neither the directive nor the guidance document clarify whether alternatives have to be assessed for the specific premises or for a larger area;

- according to Article 16 of the Habitats Directive, Member States may derogate from the provisions of Article 12 "[p]rovided that there is no satisfactory alternative and the derogation is not detrimental to the

67 Guidance Document on the Strict Protection of Animal Species of Community Interests under the Habitats Directive 92/43/EC, February 2007, available at http://ec.europa.eu/environment/nature/conservation/species/guidance/pdf/guidance_en.pdf (EN).

68 Ibid. p. 36.

69 Guidance Document on the Strict Protection of Animal Species of Community Interests under the Habitats Directive 92/43/EC, p. 47.

maintenance of the populations of the species concerned at a favourable conservation status in their natural range". In contrast, the guidance document suggests that derogations for species with an unfavourable conservation status can be permitted if the "net result of a derogation" is "neutral or positive for a species".[70] In light of the constraints on issuing approvals for such derogations, these concepts should be incorporated within the directive.

In addition, the Dutch Provinces also pointed to the fact that the reporting obligations under the Birds and Habitats Directives and their derogations would be excessively demanding. In this respect, it was reported that there exists a significant overlap between the different reporting obligations laid down in the area of the EU's environmental policy. The Dutch Provinces consider that the reporting obligations included within the nature conservation directives are not sufficiently harmonised and require LRAs to submit the same data in different ways and for different reports.[71] As an example, here are the reporting obligations faced by the Dutch Provinces:

- "Birds and Habitats Directives: every six years;
- Derogations from the Birds Directive: every year;
- Derogations from the Habitats Directive: every two years;
- Convention on Biological Diversity: every four years;
- Bern Convention (conservation of wild animals and plants and their natural environment in Europe): incidental, every six years and every ten years;
- Ramsar (Wetlands Treaty): every three and every six years;
- Convention on Migratory Species: every three years."

In general, the Vienna Convention emphasised that the protection of protected species' habitats would increase if the EU endorsed a more differentiated approach linked to the conservation status of the species concerned. This differentiated approach would help the EU to achieve the aims of the directive more efficiently.

C. Water legislation

Generally speaking, the Water Framework Directive (WFD)[72] was identified by representatives of several regions as a problematic policy area. The WFD sets

70 Ibid, p. 65.

71 Huis van de Nederlandse Provincies, supra, p. 12.

72 Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327.

the main objectives for the protection of water (i.e. rivers and ground water) within the European Union. The WFD is complemented by the Groundwater Directive[73] and the Environmental Quality Standards Directive.[74]

In addition to causing an overlap within the EU's water legislation, it has been reported by a LRA that the implementation of this framework directive would be made more complex because of discrepancies in the EPRTR and IED Directives. Indeed, it appears that waste water treatment plants are listed within the EPRTR but not in the IED. One of the objectives of the EPRTR is to inform the public about the pollutant activities covered by Directive 96/61/EC.[75] As a consequence, the EPRTR Directive states that information should be provided to the public on the actual emissions generated by a set of installations.[76] This list explicitly includes waste water treatment plants.[77] In contrast, the IED Directive does not include any reference to waste water treatment plants in its list of industrial installations. In comparison, combustion plants (i.e. thermal power stations and other combustion installations) are incorporated into both the IED and the EPRTR.

D. Fisheries policy

While being a policy in its own right, the common fisheries policy (CFP) also has close connections with the European environmental policy. The CFP is indeed also aimed at preserving marine ecosystems and ensuring the development of a sustainable fishing policy within the European Union.

The Galicia Region identified various aspects of the European fisheries policy that created particular problems for regional and local authorities. More specifically, the Galicia Region identified Regulation 1380/2013 on the Common Fisheries Policy,[78] the Total Allowable Catch (TAC) and Quotas

73 Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, OJ L 372.

74 Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council, OJ L 348.

75 Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (Text with EEA relevance), OJ L 33, Preamble, point 20.

76 Ibid.

77 Annex 1, point 5.

78 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L. 354.

Agreement,[79] the Community Control mechanism established under the CFP,[80] the landing obligations,[81] the controls established concerning human consumption,[82] the traceability of fishery and aquaculture products,[83] and the analytical control of biotoxins as provided for by international trade agreements (i.e. international trade agreements with the Philippines and Papua New Guinea),[84] and the prohibition of shark finning.[85]

In the area of fisheries policy, the Galicia Region emphasised that the reporting obligations included in Regulation (EC) 1224/2009 of 20 November 2009 "establishing a Community control system for ensuring compliance with the rules of the common fisheries policy were too demanding".[86] Article 17 of this regulation states that Community fishing vessels over 12 metres in length are required to notify the competent authorities of the state regarding the quantities of each species that are to be landed, or transhipped, at least four hours before the estimated time of arrival at the harbour. This obligation was reported to be excessive, since fishing usually involves less than two hours of sailing, which represents a loss of competitiveness and a risk for the safety of the fisherman, who will have to remain outside sheltered water for a longer period of time. In

79 The Galicia Region referred to all the Annual TAC regulations. This includes Council Regulation (EU) 2016/72 of 22 January 2016 fixing for 2016 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2015/104, OJ L 22.

80 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343.

81 See http://ec.europa.eu/fisheries/cfp/fishing_rules/landing-obligation/index_en.htm (EN).

82 Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, OJ L 139 and Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, OJ L 139.

83 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343.

84 See also Commission Regulation (EU) No 15/2011 of 10 January 2011 amending Regulation (EC) No 2074/2005 as regards recognised testing methods for detecting marine biotoxins in live bivalve molluscs, OJ L 6.

85 Regulation (EU) No 605/2013 of the European Parliament and of the Council of 12 June 2013 amending Council Regulation (EC) No 1185/2003 on the removal of fins of sharks on board vessels OJ L 181.

86 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343.

addition, the landing obligations under the Regulation (EU) No 1380/2013[87] and Regulation (EC) 1224/2009[88] impose reporting obligations that are overly complex.

The landing obligations stipulate that all catches of species "which are subject to catch limits and, in the Mediterranean Sea, also catches of species which are subject to minimum sizes" should be landed.[89] The purpose of this obligation is to reduce the size of unwanted catches and also to decrease discarding. The administrative burden related to this landing obligation was reported to be too heavy.

According to the Galicia Region, the targets included in Regulation (EU) 1380/2013 are overly demanding. The region referred to one specific example, which is Article 2.2 of Regulation 1380/2013. This article states that "In order to reach the objective of progressively restoring and maintaining populations of fish stocks above biomass levels capable of producing maximum sustainable yield, the maximum sustainable yield exploitation rate shall be achieved by 2015 where possible and, on a progressive, incremental basis at the latest by 2020 for all stocks".[90] In this regard, the Galicia Region reported that it is clear that this goal is unattainable for many species in view of the current situation of fisheries, along with social and economic conditions.

87 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354.

88 Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, 22.12.2009, OJ L 343/1.

89 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354, section 26.

90 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354.

5.4. Cohesion policy and the European Structural and Investment Funds

A. General

The ESIF are the main European investment policy tool through which the EU seeks to reduce economic differences within the single market between the regions. These funds include the ERDF, the European Social Fund (ESF) and the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF). These are frequently brought to bear in the implementation of cohesion policy, with the first three being utilised under the EU's cohesion policy. Cohesion policy was introduced by the European Single European Act and was last defined by the Lisbon Treaty. According to Article 174 of the TFEU, under cohesion policy "the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion". In order to implement cohesion policy, the EU has a large number of funding schemes at its disposal, including the European Regional Development Fund (ERDF), the European Social Fund (ESF) and the Cohesion Fund (CF). The 2014-2020 Financial Framework provides an amount of EUR 351.8 billion for the implementation of cohesion policy. This amount corresponds to as much as a third of the total EU budget.[91]

Both cohesion policy[92] and the Structural and Investment Funds were pointed to as areas in which LRAs faced particularly high administrative burdens and bottlenecks. Structural and Investment Funds were clearly identified by regions with legislative powers such as the Baden-Württemberg Government, the Salzburg Government and the Walloon Region, and by entities without legislative powers such as the Dutch Provinces, the Region of Southern Denmark, and a French Region as being problematic.

From a general perspective, it can be noted that in order to apply for such grants, it is generally necessary to follow a procedure under one of the European funds, in addition to the European public procurement and state aid rules, given that public money is invested in all these cases. Thus, the application process is generally complex and highly time-consuming, since it often involves dual procedures in which the rules are not always consistent. For example, an official from the Belgian Region of Brussels Capital declared that if a project is eligible for ERDF support, it is still necessary to verify whether it is also compatible

91 See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/genaff/140106.pdf (EN).

92 This area was pointed by the Dutch Provinces and the Auvergne Rhône-Alpes Region in their answers to the survey.

with state aid rules. It would simplify the process if, once an ERDF operational programme is approved by the European Commission, the selected project was automatically exempted from state aid notification.

Several provisions or programmes have been subject to criticism by the LRAs in our survey:

- the Salzburg Government identified the ERDF programme for the years 2014-2020 as problematic;

- ESF: According to the Podlaskie Region (Poland), European Commission requirements regarding the representativeness of the statistical sample and the permitted standard error when measuring the long-term effects of the ESF as set out in the guidance document accompanying the Programming Period 2014-2020, Monitoring and Evaluation of European Cohesion Policy, ESF, are quite restrictive, which means a very large sample size is needed when carrying out evaluation research. This, in conjunction with the requirement for carrying out the research cyclically, poses many difficulties and can prove very costly. In some cases those requirements mean that the study ought to include the whole population, which is often impossible in practical terms;

- more specifically, the Walloon Region referred to Regulation 1083/2006 of 11 July 2006[93] and Regulation 1080/2006 of 5 July 2006 on the ERDF[94] and its revised versions;

- in the same vein, the Baden-Württemberg Government considered that the partnership agreement has largely restricted the funding opportunities following Regulation 1303/2013 on the European Structural Investment Funds[95] in relation to the Regulation 1301/2013[96], under pressure from the EU Commission, without any notification. For instance, the partnership

93 Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999, OJ L 210.

94 Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund and repealing Regulation (EC) No 1783/1999, OJ L 210.

95 Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347.

96 Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006, OJ L 347.

agreement limits the requests for measures in construction and tourism to just a few limited possibilities. Broadband promotion is only possible in ELER (Europäische Landwirtschaftsfonds für die Entwicklung des ländlichen Raums);

- the Bourgone-Franche Comté Region also explained the specific problems encountered in France given the fact that management of the Structural Funds is shifting from the central state to the regions. This explains the current coordination problems and the fact that some projects are accepted in certain regions and not in others.

B. Overlap

As mentioned above, officials working in the Dutch Provinces and in the region of Scotland complained about EU Structural Funds/Integrated local development and legislation, saying that they overlap and are scattered throughout several pieces of legislation.

C. Different definitions

According to an official working in the Baden-Württemberg Government in Germany, a discrepancy can be noted between EU Regulation 966/2012 and the ESIF Regulation (1303/2013) vis-à-vis the Implementing Regulation (2015/207), Annex VI and the model for the declaration. According to the Regulation on the ESIF, any irregularities have to be controlled and dealt with. However, following the model for the declaration, possible irregularities have to be dealt with prior to the control.

Another issue related to the problem of definitions was noted by an official working for the Scottish Region, who complained about the lack of clarity surrounding the notion of eligible activities under the ESIF. The definitions of the eligible activities and strategic priorities under the ERDF and the EAFRD are different, despite addressing the same areas of need and despite the Common Provisions Regulation and the Common Strategic Framework. Hence, there is a need for consolidation with a view to less EU legislation and fewer policy instruments and targets.

D. Reporting obligations

According to a respondent from a Danish region, it is incredibly complex and time-consuming to report expenditure. Final payments are frequently delayed by longer than a year, and the main reason for this delay is to be found in the heavy reporting demands.

An official working in the Belgian Region of Brussels Capital further considered that more practical guidance from the beginning of the new period (2014-2020) on what is required in the reports would have been useful, more efficient, and saved time.

E. Lack of harmonisation

As stated above, in order to apply for such grants it is generally necessary to follow a procedure under one of the European funds, in addition to the European public procurement and state aid rules. This situation is due to the fact that it is public money that is given and invested in all these cases. Depending on the applicable legal regime, the administrative burdens for LRAs will vary from one case to another. For example, an official working for the French Region of Auvergne Rhône-Alpes considered that the justification of expenses is much easier when the European Commission launches its own calls for projects than for operational programmes. For instance, Horizon 2020 does not apply the rules relating to state aid while the same project proposed to the ESIF has to apply the rules related to the state aid. Another official, employed by the German regional government of Baden-Württemberg, noted that the funding stemming from the ESIF for enterprises is subject to less legal constraints than the funding stemming from the European Regional Development Funds, which has to be seen with its exceptions, including the Horizon 2020 projects.

In general terms, it has been noted by an official working for the Belgian Walloon Region that most of the procedures for implementation of these rules are left to the Member States, but the European Commission has flooded LRAs with guidance on public procurement, fraud, eligibility of expenses, and financial corrections, amongst other things. Hence, there is a high probability that some of these rules will overlap, and in such cases the administration does not know whether it should apply the decisions of the government or the guidance of the European Commission (if they are aware of the latter) because they are not always consistent (as guidance is applicable to all Member States, which means that it is quite general).

Additionally, another reported issue is that depending on the Commission department to which officials working for LRAs address their questions (i.e. DG Regio and DG Employment), they may receive different answers to the same question.

This observation led an official from the Scottish Region to argue for more consolidation with a view to less EU legislation and fewer policy instruments and targets.

Furthermore, the different concepts referred to in the ESIF and State Aid Regulations could be harmonised (for example the concept of costs and integration of simplified costs in State Aid Regulations). The same harmonisation process could apply to the periods during which public authorities (or management authorities) have to follow up on state aid and ERDFs, which are currently not the same. Such harmonisation would simplify follow-up to operations after aid/funds have been provided.

F. Excessively demanding targets

For an official working in a German regional government, Regulation 1303/2013 is a revealing example of EU legislation setting excessively demanding targets for LRAs. In this framework it is extremely difficult for LRAs to set realistic precautionary aims.

The concern of excessively demanding targets was more generally shared by an official working for a Danish region, who reported that the control paradigm is at times in conflict with the aims of regional development policies, where LRAs often seek to support small enterprises. However, it is nearly impossible for such enterprises to cope with the control set-up. Thus, the majority of funding for smaller enterprises in this region is channelled through intermediaries, because they cannot cope with the bureaucracy. Moreover, there is too much control and too little differentiation between minor errors and huge fraud in this field.

An official from the Belgian Brussels Capital Region suggested that the European Commission should be more flexible with regard to a particular situation in the region or Member State, as well as adapting more flexibility to targets during the same programme. For instance, it proved to be difficult to set targets from the beginning of a particular programme without knowing which projects would be selected and how the context could evolve. The targets that were fixed were sometimes too high or irrelevant (the selected projects had different kinds of targets), but afterwards it was very difficult to adapt and/or modify targets.

On a more particular note, a Belgian municipality raised the concern that, in some cases, national and/or regional targets tend to be more stringent than targets at European level. This may be linked to the phenomenon of "gold-plating", as possibly witnessed in the allocation and management of structural funding. This phenomenon consists of additional administrative requirements set by national and regional authorities responsible for managing EU funds.[97]

97 On 21 June 2016 a High Level Group on Simplification met in Brussels to discuss this issue. For further information, see http://ec.europa.eu/regional_policy/en/newsroom/news/2016/06/21-06-2016-simplifying-access-to-the-esi-funds-high-level-group-on-simplification-tackles-gold-plating (EN).

G. Too many audits

Numerous respondents were critical of the abundance of audits in the area of cohesion policy and the ESIF. While some of them complained about these issues in general terms, such as officials from the Italian Autonomous Province of Bolzano, the Belgian City of Antwerp, and the Belgian Region of Brussels Capital, others more specifically pointed to specific aspects of these policies.

For example, an official working for the Baden-Württemberg Government pointed to Regulation 1303/2013 and the fact that there were too many controlling authorities in this field - administrative authorities, the European Commission, the Court of Auditors, amongst others. An official working for the Belgian Walloon Region confirmed that, for any subsidised project, the regulations require three different layers of national controls, management, certification, and audit, and a fourth control, an audit by the Commission itself – DG Audit, DG Regio – or the European Court of Auditors. This constitutes a heavy bottleneck for LRAs, also condemned by an official from the French Auvergne Rhône-Alpes Region and an official working for a Danish region.

An official working within the Belgian Brussels Capital Region added that another problem relates to the heavy burden of the audits in the area of cohesion policy. At times, in his view, LRAs prefer not to work with European funding in order to avoid endless audits. In the field of the ESIF, most of the regional operators submit an audit to the national audit authority, while they already have a control (document-based and on-the-spot check) by the management authority. This audit, which seems very much like a second control, takes too much time (for beneficiaries and for the management authority, which is involved in the audit process) and does not necessarily represent added value. A more general sampling audit could keep the function of an audit, without representing such an investment for those concerned. Moreover, the opinion of the auditor carries great weight and can have critical consequences, without necessarily including legal grounds for the provisional measures and without a real possibility of disputing them. While it makes sense for the management authority and the national audit authority to be independent, the fact that the latter can take measures regarding the former's decisions turn this independence into a hierarchical position. Even if EU legislation does not oblige the management authority and the certification authority to apply the financial corrections recommended by the national audit authority, the auditors of the Commission nevertheless interpret it as such.

Another respondent working for a Lithuanian municipality confirmed the need to revise and minimise procedures with regard to EU Structural Funds administration.

A representative of the Dutch Provinces considered that there are not too many audits, but that the audit pressure and high execution costs within the ERDF programme mean that innovative entrepreneurs in the Netherlands increasingly opt not to apply for ERDF subsidies. The benefits are outweighed by the costs, and the risk of corrections to the promised subsidy is perceived as being considerable.

5.5. Energy

The field of renewable energies has caused particular burdens and bottlenecks for LRAs, as shown by the responses received to the survey. Officials working for the Government of Åland (Finland), Scotland, the Brussels Capital Region and the Auvergne Rhône-Alpes Region stressed their difficulties in implementing the EU legislation in the area of renewable energies. Specifically, both Scotland and the Brussels Capital Region identified the Energy Performance of Buildings Directive (EPBD)[98] and the Energy Efficiency Directive (EED)[99] as being particularly problematic in terms of administrative burdens.

According to the responses given by the officials from Scotland and from Brussels, there is an overlap between the Energy Efficiency Directive and these other two directives. For instance, Article 7 EED lays down requirements in the field of energy savings which have to go further than Pro-Environmental Behaviour (PEB). However, the PEB requirements set by each Member State concern these energy savings. Thus, it makes no sense for the aim of the EED to be so disconnected from that of the EPBD, particularly in a city region. It would have been preferable to have a common aim.

There is also a lack of harmonisation, according to the official from Brussels, in relation to energy legislation. This respondent suggested that the EU adopt either a summary regulation or a summary paper which recaps each "activity" applied by regime(s). He condemned the fact that there are currently more than five directives in the field of energy.
Additionally, according to this same official, in terms of definitions, there is a lack of clarity in various sectoral regulations (e.g. industries to which we deliver environment permits) in the area of energy.

98 Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings, OJ L 153.

99 Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC Text with EEA relevance, OJ L 315.

As to the reporting obligations, these are too demanding in the area of energy legislation for the official from Scotland. He criticised the reporting obligations included in the EED, which lays down stand-alone reporting obligations that are inconsistent with often more ambitious domestic reporting obligations, resulting in dual reporting obligations, just to meet the EU conditions.

In addition to being overly demanding, the reporting obligations also overlap. Indeed, the overlap also occurs in the area of energy policies, according to the responses from Åland (Finland), Scotland and the Brussels Capital Region. Both Scotland and the Brussels Capital Region refer to the EED as being particularly problematic. According to the official from Scotland, the reporting obligations for the EED considerably overlap with reporting obligations under the European 2020 strategy, particularly with regard to the energy and climate objectives.

Moreover, these instruments impose excessively demanding targets, according to the responses from Åland and Brussels. For instance, Article 7 EED represents very ambitious energy savings which are coupled with too many constraints which do not allow the valorisation of pertinent measures in terms of energy savings. Another example may be found in Article 8 EED concerning the audits of big companies: the audit frequency of four years is costly for big companies, without any added value, while there is no obligation to implement the identified rentable measures. These measures are in addition to the legislation concerning the energy audit already existing in Brussels.

Finally, the respondent from the Brussels Capital Region voiced concern over the excessive number of audits imposed by the EED, in particular Article 7 thereof, which requires numerous EU pilots on details which the respondent believes do not in practice correspond to the reality.

5.6. Transport

The difficulties encountered in the area of transport fall into two categories. Regions, provinces, and cities are facing issues that relate to transport infrastructure, on the one hand, and road charging on the other.

In the area of road charging, a respondent linked to the Flemish Parliament in Belgium pointed out that the EU imposes limits on the extent of what a Member State can lay down or include in new policy frameworks. These limits appear to be very clear, as shown by a current infringement case launched by the

European Commission on the introduction by Germany of a new road charging scheme for private vehicles ("PKW-Maut").[100]
The Salzburg Government also referred to the fourth railway package and the Regulation on public passenger transport services by rail and by road[101] as being particularly problematic.

100 See http://europa.eu/rapid/press-release_IP-15-5200_nl.htm (EN).

101 Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70, OJ L 315.

6. Initiatives taken by LRAs to reduce the burden

Various initiatives have been endorsed by LRAs in order to address the bottlenecks mentioned above, as well as to reduce the administrative burden inherent in the implementation of European legislation in general. These initiatives take different forms, including local and regional programmes, campaigns to cut red tape and e-governance initiatives.

6.1. Initiatives such as local and regional programmes

15 LRAs referred to local or regional programmes that have been set up to tackle the administrative burden inherent in the implementation of EU legislation. The reduction of the administrative burden through regional or local initiatives was nevertheless described as a difficult process in a context where EU directives and regulations are "so complicated and exhaustive". Therefore, the complexity and comprehensiveness of EU directives decreases the leverage of LRAs when they have to tackle the difficulties inherent in the implementation of EU legislation.

Regional and local programmes to decrease the administrative burden can take different forms. For example, a French region referred to the information sessions it organises for project managers in order to facilitate the work of the administration. These information sessions have been described as being particularly useful in the area of public procurement. In addition, regional or local initiatives sometimes involve internal administrative restructuring. Structural administrative solutions lead some LRAs to appoint specific contact persons for questions directly pertaining to the implementation of EU legislation. In the same vein, in Scotland, a Scottish Better Regulation Taskforce was established (then replaced by the Scottish Better Regulation Commission as of 2006).

Ultimately, all these initiatives share the common aim of bringing administrations, businesses, and individuals closer to each other.

6.2. Initiatives such as campaigns to cut red tape

A very large set of LRAs reported that they undertake campaigns to cut red tape.

These campaigns tend to take two forms. On the one hand, LRAs can be encouraged to participate in meetings that aim to discuss the different ways to reduce the administrative burden of the administrations (e.g. Austria). The purpose of these meetings is to discuss the possibilities to limit the administrative burden within specific fields within the remit of the regions concerned. However, these discussions are frequently soon constrained by the high documentation requirements laid down in the EU reporting obligations. However, on the other hand, information sessions are also organised by LRAs (e.g. City of Antwerp, Municipality of Ferreira Alentejo and Municipality of Cardaxo) in order to inform the public, particularly regarding the digitalisation of services.

6.3. Initiatives such as innovative e-government solutions

A large number of LRAs indicated that they undertake innovative e-government solutions in order to facilitate the implementation of EU legislation. These e-government solutions can take the format of collaborative programmes for e-administration. In Scotland, for example, some of these e-government solutions are supported by the Convention of Scottish Local Authorities. In other cases, e-government portals have been created (i.e. the Siauliai Municipality, the Municipality of Pombal, the Municipality of Castelo Branco, and the Municipality of Cardaxo). These digital services and telematics systems can include online forms to be used by the administration or by the citizens. Finally, LRAs also launch reflections on making it possible for citizens to communicate formally with their administration using electronic tools, such as in the Municipality of Castelo Branco and the Salzburg Region. In the case of the Salzburg Region, the region is currently examining the possibility of submitting requests electronically to the Agricultural Market in Austria (AMA). It was reported that the Austrian regions have been pushing in that direction for quite some time. The AMA aims to ensure the correct implementation of agricultural regulations and also to conduct marketing initiatives.

To answer the specific problem of "landing obligations" (see above), the Government of Galicia enables its fishermen to submit the necessary information through digital systems.

More work needs to be done and to be supported in a context where some LRAs (i.e. Municipality of Gijon, Spain) are still working on the development of their own strategy to develop e-government solutions.

6.4. SIMPLEX (Portugal) and Easy.brussels (Belgium): two initiatives to cut red tape and develop innovative e-government solutions

In order to support LRAs, the national authorities in Portugal initiated and launched the programme SIMPLEX, a centrally developed programme, in collaboration with municipalities. The SIMPLEX programme combines initiatives to cut red tape with e-governance measures aimed at reducing the administrative burden for both citizens and businesses (1); delivering public services in a more efficient and recipient-oriented way (2); and improving the internal efficiency of the administration (3).[102]

The Brussels Capital Region created a regional platform for administrative simplification called Easy.brussels. The purpose of this regional platform is to share the best practices in terms of administrative simplification that emanate from the different administrative services of the region.[103] It is in that context that numerous IT solutions have been developed in order to optimise work processes and make them paperless such as scanning of files, new electronic applications for requesting attestations, sharing platforms, etc. These initiatives include:

- **Brucodex**, which brings together all the publications from the Belgian Official Journal (*Moniteur Belge*) and the Official Journal of the European Union in the areas of urbanism and environment.[104] The website is updated on a daily basis. In addition, a newsletter is circulated daily to more than 6000 subscribers. Therefore, Brucodex serves as a very useful shared space allowing progress in the implementation of EU legislation to be seen;

- **Fidus.brussels**, which is an online platform that was created by the Brussels Capital Region and provides access to all the public services

102 Maria Manuel Leitão Marques, Simplification strategies through e-Government: Portuguese initiatives, Presentation made at the OECD, October 2010, available at https://www.oecd.org/regreform/policyconference/46312938.pdf (EN).

103 See generally: http://be.brussels/a-propos-de-la-region/le-ministere-de-la-region-de-bruxelles-capitale/secretariat-general/cellule-simplification-administrative-et-e-government (FR).

104 For more info, see: http://www.brucodex.be/fr (FR).

related to the institutions as part of the institutional landscape of the Brussels Capital Region. This platform serves as an application of the once only principle. It enables citizens to submit relevant information to the administration only once.[105] The administration is then obliged to share that information with the other administrations.

105 François Dumortier, "Échanges électroniques entre administrations : et fidus.brussels fut !", 12 April 2016, available at http://cirb.brussels/fr/blog/2016/04/echanges-electroniques-entre-administrations-et-fidus-brussels-fut (FR).

7. Conclusions

To conclude, it is useful to make reference to some of the central concerns identified by LRAs and to identify some of the main solutions provided for tackling these concerns. This section is divided into two parts: it first briefly summarises the findings of this report and then suggests a set of policy recommendations for the European Commission and also LRAs. On the one hand, the recommendations will identify some of the main factors that the European Commission should take into account when reflecting upon the administrative difficulties encountered by the LRAs in the light of the REFIT Programme. On the other hand, LRAs should learn from some of the best practices developed within other LRAs in order to be better and more fully equipped when dealing with the implementation of EU legislation.

Two important caveats must be brought to the attention of the reader at this stage. While the conclusions and recommendations are based on the findings of research covering LRAs from 14 Member States, the findings of this report do not claim to be exhaustive or representative of all bottlenecks or burdens faced by LRAs when implementing of EU law. In addition, it is important to bear in mind that the actual concerns encountered by LRAs very often depend upon the political, economic, social, and geographic situations of each individual LRA.

7.1. Main findings of the report

From this report, it emerges that the nature of the EU legislation to be applied by LRAs has an impact on the difficulties faced in the implementation process. The report made it clear that many of the problems faced by LRAs related primarily to the implementation of EU directives. In this respect, directives that embrace cross-cutting policy areas (e.g. Directive on Services) appear to be the most problematic. Indeed, these directives combine a certain vagueness that leaves LRAs great scope for interpretation with very demanding targets and reporting obligations. In this respect, LRAs are frequently ill-equipped to deal with the complexity inherent in these pieces of legislation.

In this regard, it is very clear that not all LRAs have the same capacity to tackle the bottlenecks and administrative burdens inherent in the implementation of EU legislation. The scale of the difficulties faced by smaller administrations – especially local authorities – appears to be significantly higher than for those authorities with a stronger bureaucratic apparatus. The high expectations and sometimes very demanding obligations included in EU legislation therefore

appear to be more manageable for larger than for smaller administrations, which clearly lack sufficient administrative staff and expertise.

This report identified a number of recurring bottlenecks that appear in many diverse policy areas. These include: the existence of different definitions of concepts necessary for the implementation of EU legislation; the existence of overlaps across EU legislation and reporting obligations; excessively demanding obligations and targets; and too many audits. These bottlenecks are arguably reinforced by a number of factors:

- the existence of multiple legislative sources to be taken into account in the implementation of EU legislation and the fact that the multiplication of legislative sources is not based on a rational calculation but rather on the result of distributive politics and principal-agent problems;

- the absence of stability in the EU's legislative framework, with changes in the legislation that are too recurrent and numerous;

- translation-related concerns tend to exacerbate some of the bottlenecks. Some mistakes are made in the translation of EU legislation at national level. These mistakes are often reinforced by the absence of translation of guidance documents in all EU languages;

- contradictions between EU legislation and guidance documents confuse LRAs in their implementation of EU legislation. The inconsistencies between guidance documents and EU legislation described in this report are evidence of the lack of a user-driven approach;

- the legislative status of guidance documents remains unclear. The numerous guidelines published by the European Commission create, in fact, uncertainty for LRAs which do not know any more whether they should abide strictly by the national legislation or by the guidance of the European Commission;

- the challenges caused by multi-level governance dynamics are also problematic. Implementation or reporting obligations laid down at local or regional level are not, indeed, always consistent with the same implementation or reporting obligations at national or European levels.

LRAs tend to undertake various initiatives to tackle the difficulties they face when implementing EU legislation. These initiatives include local and regional programmes, campaigns to cut red tape and e-governance measures. For these initiatives to be a success, it appears that a multi-layered approach that also

involves state authorities is crucial. Nevertheless, it remains difficult to assess the success of the majority of these initiatives due to the absence of clear measures to evaluate the decrease in the administrative burden.

As a final point, it should be borne in mind that some EU instruments are proving to be completely counterproductive due to the very heavy administrative burden they entail for businesses, citizens, and/or the administration. As a consequence of this administrative burden, some actors simply prefer to give up on receiving support at the European level due to heaviness of the obligations involved.

7.2. Policy recommendations

Based on these findings and on suggestions made by the respondents themselves in the survey, the project team has put together the following policy recommendations for the European Commission in order to diminish the administrative burden faced by LRAs in relation to implementing EU law. As demonstrated in this report, there is a need for more harmonisation at EU level. This is especially true for areas that are particularly interlinked, such as the rules on state aid, on the ESIF and on public procurement. The European Commission should strive to avoid any discrepancies between these rules, and also harmonise the definitions of concepts used in these rules.

Such harmonisation of EU law would certainly avoid inconsistencies between rules and instructions at national and regional/local levels. In this line, important definitions should be clarified within EU legislation, not only within non-binding documents, such as guidance documents.

Furthermore, the EU legislation and its accompanying guidance documents have to be easily accessible to LRAs in an understandable and simplistic way. This requires all these documents to be translated into all official languages used and spoken in the LRAs in the 28 EU Member States. In addition, the guidance documents should be drawn up on the basis of a user-driven approach, and take the specific concerns of LRAs into account.

Providing LRAs with information early on may also help to reduce administrative burdens. The earlier and more quickly LRAs are informed about the impact of EU legislation, the better they will be able to cope and manage it.

Similarly, territorial impact assessments should be carried out by specifically targeting local impact and drawing on the evidence that is currently available. Hence, the outsourced consultants, Member States or regional authorities

generally fail to take into consideration the readily available evidence from local authorities, particularly in terms of existing burdens and potential solutions informing EU policy formulation.

Another crucial issue is reducing number of controls. Numerous LRAs suffocate under the pressure of audits. One possible means of reducing this burden may be to progressively replace paper controls with online and more innovative forms of controls. Another possibility would be to replace systematic controls with a random system, at least in certain specific policy fields. For example, the controls imposed in relation to the measurement of surfaces in the field of forestry are particularly burdensome. In this case, a random control would certainly reduce the burden for LRAs.

Similarly, the controlling authorities should develop more efficient and pragmatic controls. EU procedural requirements would be more understandable for LRAs if these controls were more practically oriented. Currently, numerous potential beneficiaries refrain from requesting European funds because the benefits are outweighed by the costs and the risk of corrections to the promised subsidy.

Generally, it seems that relaxing certain procedural requirements would certainly greatly reduce administrative burdens. For instance, in relation to the marketing of agricultural products, the difference between Annex I and non-Annex I products, with different requests in the field of the processing and marketing of agricultural products, places a huge administrative burden on LRAs. Indeed, different rules apply to the requests, creating heavy bureaucracy for recipients. A possible solution would be to assign projects to the corresponding procedure after the main distribution between Annex I and non-Annex I.

Lastly, LRAs should exchange more on best practices relating to the implementation of EU legislation. In this regard, both the European Commission and the CoR could have a significant role to play in facilitating this exchange. In this respect, the overall purpose should be to bring citizens, businesses and EU institutions closer to each other. To this end, it appears to be critically important to take into account the diversity of players targeted by EU legislation.