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Territorial Cohesion Policy
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COTER

Simplification measures in the Cohesion policy proposals for 2021-2027 and impact of the CoR political work

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Executive Summary

The preparations for the 2021-2027 programmes focus on simplifying the administration of Cohesion Policy. Together with the draft regulations, the European Commission (EC) published a simplification handbook presenting 80 simplification measures proposed for Cohesion Policy 2021-2027.

This file note presents a short analysis to what extent these 80 simplification measures reflect the CoR opinions on this matter. In particular simplification measures that directly impact local and regional authorities (LRA) in the capacity of programme authority or beneficiary have been considered. CoR opinions 8/2016, 5838/2016, 4842/2017 and the conclusions and recommendations from the High Level Group on simplifications have been compared to the Common Provision Regulation 2021-2027 proposal.

The CPR follows CoR points for increasing harmonisation between funds by proposing a single handbook, more proportionate control and audits, increasing flexibility allowing to adapt the programme to new socio-economic and territorial contexts, enhanced uptake of simplified cost options, acknowledgement of a territorial dimension, less reporting requirements and increased attention to the needs of LRA with less capacities.

Three proposed CPR measures not proposed by CoR points will impact the role of LRA. The newly introduced option of financing not linked to costs, clearer rules for fund recycling, and the proposal to reimburse technical assistance in line with implementation progress, were not considered by CoR in the assessed opinions, even though they might imply a need for changing the mindset of LRA.

Seven CPR proposals partially or completely neglect the CoR position. The CPR does not include proposals for establishing one-stop-shops, measures to ensure regulatory frameworks covering more than one programming period, provisions to harmonise state aid rules between centrally and shared management funds or specific provisions against retroactivity. Furthermore, it includes limited additional instruments to strengthen trust building and proposes less audit simplifications than proposed by CoR. Moreover the CPR explicitly mentions to abolish overarching frameworks such as the common strategic framework. In these cases the CoR shall re-emphasise the added value and benefits of corresponding simplification measures.

Some aspects for simplification require changing the mindset of programme authorities and beneficiaries. LRA in these capacities should anticipate these changes by already now examining the possibilities for SCOs, ITI and CLLD.

1 Introduction

The preparation of Cohesion Policy for the period 2021-2027 is in progress. Local and regional authorities (LRA) play an important role in the implementation of Cohesion Policy. Accordingly, it is important that their voices are heard in the consultation processes preparing for the next programme period.

As previously, the preparation of the 2021-2027 programming period focuses on simplifying the administration of Cohesion Policy. However, there is a considerable ambiguity of what simplification means in practice. Indeed, the understanding of simplification ranges from pleas for more freedom and flexibility to demands for more detailed and clear-cut instructions with no room for (mis-)interpretation. In the context of the present file note, simplification means better structures and frameworks allowing for more freedom, flexibility, and subsidiarity under shared responsibility within those structures.

Based on this understanding, this paper presents a short analysis to what degree the proposal for the Common Provisions Regulations 2021-2027 (COM(2018) 375 final) follows, goes beyond, opposes or neglects key points raised by the CoR. The assessment is based on a review of the CoR opinions 8/2016¹, 5838/2016² and 4842/2017³ and a careful reading of the CPR (COM(2018) 375 final) and the simplification handbook (COM 2018). In addition, the conclusions and recommendations from the High Level Group on monitoring simplification for beneficiaries of the European Structural and Investment Funds (hereafter HLG) have been reviewed.

The file note focuses on points that mostly impact LRA in the capacity of programme authority or beneficiary. The most relevant points raised by CoR in the three abovementioned opinions have been summarised and compared with the 80 simplification measures presented in the simplification handbook.

The file note highlights important points raised by the CoR that are already included in the proposed CPR and indicates what could be further emphasised to ensure consideration of CoR positions in future Cohesion Policy.

¹ CoR opinion 8/2016 on “Simplification of ESIF from the perspective of Local and Regional Authorities” adopted on 11 October 2006, OJ C 88, 21.3.2017, p. 12.

² CoR opinion 5838/2016 on “The financial rules applicable to the general budget of the Union” adopted on 11 May 2017, OJ C 306, 15.9.2017, p. 64.

³ CoR opinion 4842/2017 on “Final Recommendations of the High Level Group on Simplification post-2020” adopted on 1 February 2018, OJ C 176, 23.5.2018, p. 51.

2 Cases in which the CPR principally follows CoR suggestions

This sections reflects simplification measures that largely follow CoR positions. For every point, a short introduction to the issue is followed by a summary of the CoR opinion(s) and the proposals in the CPR. Each section closes with a short consideration of what these changes may imply for LRA involved in Cohesion Policy.

2.1 Single rule book

A single rule book entails a single legislative framework for all funds, ensuring aligned implementation rules, clarity and a coherent implementation framework.

CoR proposes a single rule book consisting of a new Common Strategic Framework for all EU policies and funds having a territorial dimension, including horizontal rules (e.g. eligibility rules) applying to all those policies and funds. Only for Interreg a separate regulation may be proposed.

The advantages of such a single rule book include the possibility to adopt a single methodological environment, to enable synergies between ESI Funds under identical rules, and to allow for synergies between ESI Funds and centrally managed programmes, including public procurement and state aid rules. For clarity purposes, the single rule book avoids additional (and late) delegated or implementing acts or implementation guidelines, and it sets EU-level requirements.

The CPR proposal contains a single rule book for seven funds under shared management. Despite sharing the same general proposal, the extent to which funds are streamlined differs between the CoR opinions and the Commission proposal. The Commission proposal covers four ESI Funds and three other funds under shared management⁴. In contrast to the current CPR, the EAFRD is no longer included single rule book for 2021-2017 despite its inherent territorial nature, making it more difficult to coordinate with ERDF and ESF⁵.

⁴ European Regional Development Fund (ERDF), European Social Fund Plus (ESF+), Cohesion Fund (CF), European Maritime and Fisheries Fund (EMFF), Asylum and Migration Fund (AMF), Internal Security Fund (ISF) and Border Management and Visa Instrument (BMVI).

⁵ Bachtler, Mendez and Wislade (2018), *Proposals for the MFF and Cohesion Policy 2021-2027: a preliminary assessment*, EPRC, p. 23.

The draft CPR aims at having *almost* all rules in one place, with reduced room for implementing and delegated acts, which will still be possible. The draft CPR makes an attempt to reduce the empowerments, but not eliminating them completely. A specific Interreg Regulation is proposed, following the CoR recommendations. The CPR is not dealing with it directly, but precedence of EU legislation is a principle in the Treaty, which needs to be combined with the subsidiarity principle.

The CPR proposals impact LRA in the capacity of programme authorities positively. Harmonisation of rules makes it easier to manage more than one fund or multi-fund programmes. The impact for LRA as beneficiaries depends on the level of experience with ESI Funds and their use of multiple funds. Beneficiaries that are active in various funds will experience most benefits, in particular thanks to streamlined language and terminology across different funds. Beneficiaries that are used to existing frameworks will need to get familiar with new rules and requirements.

2.2 Controls and audits

Audit and verification tasks are among the most costly and burdensome administrative tasks. This is not least a result of the regulatory obligations but also due to gold-plating⁶.

When it comes to financial reporting, the CoR underlines that relationships between Managing Authorities (national or regional) and beneficiaries need to become more flexible including simplifications of audit rules and the processes for monitoring, reporting and certifying expenditure.

The assessed CoR opinions concern not only the CPR but also the modifications made on the financial regulation in 2016. This file note focuses on simplification aspects related to the CPR. Three main aspects are considered by CoR.

- **Audits should remain proportional to the amount of aid granted.** Furthermore, the effects of corrections to partners or projects not incurring in irregularities should be avoided.
- **Introducing the principle of trust and cross reliance.** This would allow for several simplifying actions: audit authorities would rely on management verifications rather than dealing with beneficiaries and they would consider

⁶ Gold-plating describes additional rules and regulatory obligations that go beyond the European Structural and Investment Funds requirements set out at EU level and that make the implementation more costly and burdensome (European Parliament, 2017).

good results of previous audits. Besides, a clear distinction between unintentional errors and fraud would promote a climate of trust. Finally, better coherence between audit methodologies at EU and national level should be sought.

- **Shortening the period for record-keeping.** Shorter periods of record-keeping would make the administration more cost-effective.

The CPR proposal is putting the principle of proportionality (to the risk level) at the forefront of the control and audit systems (Art. 68 CPR). The proposal states that management verifications would be risk-based and proportionate to the risks (art. 68(2) CPR). In addition, it introduces the reliance approach: under specific conditions management verifications may be based on national procedures only (Art. 77-79 CPR)⁷. Audits would rely on information from the management verifications and request additional evidence from beneficiaries only if needed, which would reduce the burden on programmes (Art. 74(1) CPR). In addition, the time to keep supporting documents is limited to 5 years from the last payment made to the beneficiary (Art. 76 CPR).

The CPR proposal introduces the single audit arrangement (Art. 74 CPR), which would principally reduce the number of audits per operation to one during the lifetime of the project (operations under EUR 400,000 of eligible expenditure under ERDF, for example) or to one per accounting year (for operations above that threshold). Exceptions apply if there is a specific risk or irregularity or an indication of fraud, if there is a need to reform the work of the audit authority or if there is evidence of a serious deficiency in the work of the audit authority.

Adopting a single audit approach is in line with the CoR's position proposing differentiated approaches for audits and controls based on contracts of confidence between the EU, national audit, managing authorities and beneficiaries, e.g. by enabling more reliance on national rules and more flexibility to accommodate existing national checks and procedures.

Programme bodies will be positively impacted by these measures, especially as concerns the spreading of the risk-based approach at the management verification level and the trust among the various bodies. At the same time, the workload will be reduced, most of all for those programmes of low risk. Operations will get fewer requests for information in case audits are performed, and will get a limited number of audits (depending on their financing).

⁷ For example the requirement to yearly report a an error rate below 2%.

2.3 Flexibility

The regulatory framework of Cohesion Policy has to balance requests for more flexibility and for tighter and more detailed rules. On the one hand, some players argue that tighter and more detailed rules will help to reduce uncertainty and scope for (mis-)interpretation. On the other hand, many players argue for more flexibility to reflect subsidiarity and diversity in administrative frameworks and conditions and move the focus to performance instead of compliance.

The CoR advocates a simpler and more flexible regulatory framework of future Cohesion Policy. The flexibility concerns among others in particular three aspects:

- Swifter and simpler procedures for amending operational programmes in order to react to new situations including technological development.
- Simpler and more flexible running of operations including relationships between Managing Authorities and beneficiaries. LRA have repeatedly called for simpler and more flexible rules to speed up the implementation of EU funds.
- A more differentiated approach in the areas of audit, reporting and controls by enabling more reliance on national rules and more flexibility to accommodate existing national checks and procedures (see section 2.2).

Overall, the proposed CPR is a move towards more flexibility. It provides less tight and detailed rules as the regulatory framework of the current or past programme periods. As for the first point, flexibility has been increased substantially for changes within the programme. In short, the CPR envisages no Commission decision for non-substantial financial transfers within a programme, up to 5% of a priority's financial allocation (Art. 19(5) CPR), also minor clerical and editorial changes can be made directly by Member States without Commission decision (Art. 19(6) CPR). Furthermore, there is no separate procedure for programme adjustments, as technical adjustments can be combined with the performance review in 2025 (Art. 14(2) CPR) and this will not require adjustments of the Partnership Agreement.

The CPR leaves substantial scope to the programmes in the way they communicate and deal with beneficiaries. Consequently, important changes lie with the programme authorities rather than with the CPR. In general, the support for an extended use of SCO (Art. 48-51 CPR) (see section 2.4) should support more flexible relations.

The increased flexibility should have positive impacts on LRA that are Managing Authorities. The change can potentially imply a reduction in

workload as well as easier and leaner processes for changes at programme level. LRA which are beneficiaries are not expected to be particularly affected by the simplification. However, there are possible positive effects if programme bodies use some of the flexibility to change their approach towards beneficiaries.

2.4 Simplified Cost Options

Simplified Cost Options (SCOs) hold a huge simplification potential both for programme bodies and beneficiaries. SCOs cover unit costs, lump sums, and flat rate financing. So far SCOs are mainly used by ESF programmes, but increasingly also other Funds are applying SCOs. This is considered one of the main simplifications with a high potential to reduce administrative costs and burden.

The CoR welcomes the wider use of SCOs and recommends them to be extended to cover inter alia projects involving Services of General Economic Interest (SGEIs). Moreover, the CoR advocates the use of standard scales not be subject to approval in advance by the Commission or at least be limited so as to allow Managing Authorities to make significant simplifications in management.

The CPR includes efforts to substantially extend the use of SCOs (Art. 48-51 CPR). This includes among others the obligation to use SCOs for operations below 200,000 EUR. The definition of SCOs remains without the need of approval by EC. In contrast to the CoR position, the CPR suggests that the obligation to use SCOs shall not to be applied for operations for which the support constitutes State aid. Member States shall decide whether to apply this obligation or not. Generally, SCOs can be either based on ‘off the shelf’ approaches provided by the respective Directorate General or on approaches tailor made by the programmes. The latter is often used more carefully due to fears of auditors questioning the approach at a later stage.

An extended use of SCOs implies considerable simplifications for LRA, both in the positions of beneficiaries and Managing Authorities. The main benefit of SCO entails the reduced scope of control and audits. Spatial Foresight & t33 estimate in a recent study that depending on the extent to which SCOs are taken up, they have the potential to reduce administrative costs of programmes bodies between 2% and 25%. However, a reduction of 25% is based on extreme assumptions and requires a level of uptake which is unlikely to be achieved.

2.5 Territorial dimension

The need to strengthen the territorial dimension of Cohesion Policy has been debated for a long time. This concerns both the involvement of players from the ‘territories’ as well as specific tools focused on territorial issues.

In the 2014-2020 programming period, some attempts have been made. This includes e.g. the introduction of Community-led Local Development (CLLD) and Integrated Territorial Investments (ITI) for all ESI Funds. Also the partnership principle and thus the involvement of a wider set of players from the programme territories have been strengthened through the Code of Conduct.⁸ For a long time the CoR has been advocating a stronger involvement of players from the territories and a stronger territorial dimension of Cohesion Policy.

The CoR argues that the use of territorial tools should be further encouraged (especially ITIs) and simplified (e.g. through common rules) to ensure a larger uptake. A greater use of these tools would further strengthen the partnership approach. Generally, the CoR argues for pursuing the partnership principle with LRA more readily in the design and through the implementation of ESIF.

CLLD and ITI will be continued post 2020 and the CPR proposes a dedicated Policy Objective for them: PO5 (Europe closer to citizens – sustainable and integrated development of urban, rural and coastal areas through local initiatives). This means fewer specific objectives and simplicity in using indicators and the possibility to combine activities financed under all other policy objectives – enabling a genuinely multi-sectorial integrated approach tailored to the local context (Art. 4(1)(e), 22-27 CPR and Art. 8-9 ERDF/CF).

Furthermore, a number of other technical simplifications are presented in the CPR which should simplify the use of CLLD and ITI (Art. 22-28 CPR and Art. 8-9 ERDF/CF).

With regard to the partnership approach, the CPR envisages that integrated territorial strategies required for ITI shall be drawn up under the responsibility of the relevant urban, local or other territorial authorities or bodies (Art. 23 CPR). More generally, the CPR emphasises the Code of Conduct shall be applied underlining the multi-level governance approach and ensuring the involvement of the civil society and social partners (Art. 6 CPR).

⁸ DG Regio (2016) Implementation of the partnership principle and multi-level governance in 2014-2020 ESI Funds. http://ec.europa.eu/regional_policy/sources/policy/how/studies_integration/impl_partner_report_en.pdf

The CPR proposals allow for a higher uptake facilitating the work of LRA.

For those involved in programme bodies or intermediate bodies it should make it easier to administrate the tools, in particular when building upon experience gained in the 2014-2020 programme period with these tools. Those LRA being beneficiaries should benefit from a higher uptake of territorial tools and some of the simplifications which will be carried forward by the programmes.

2.6 Reporting

Besides financial controls, reporting is one of the major sources for complaints about administrative costs and burden in Cohesion Policy. On the one hand continuous efforts are made to simplify reporting tasks, while on the other hand increasing demands for transparency, accountability, result-orientation, as well as up-to-date information of the state of play of the implementation of Cohesion Policy create additional reporting needs. In addition, some programmes add reporting routines beyond those required by the EU regulatory framework.

CoR opinions emphasise the need to focus on performance rather than on compliance. Reporting concerns financial reporting (see also section 2.2) and reporting for monitoring and evaluation purposes. While reporting currently focuses on compliance issues the focus should be on performance, i.e. beneficiaries and their activities must be the focal point of Cohesion Policy. This implies creating conditions favourable to beneficiaries and particularly cutting red tape and limiting reporting by beneficiaries to data on project delivery.

The proposed CPR contains a number of changes related to reporting affecting both programme bodies and beneficiaries. The most relevant are:

- **There will be no longer any action plans or reporting obligations if enabling conditions are not fulfilled** (comparable to ex-ante conditionalities in the 2014-20 programming period). Member States just need to inform the Commission as soon as they consider the enabling condition fulfilled with justification (Art. 11 CPR).
- **There will be one reporting system for all forms of finance.** This means various reporting streams will be integrated not requiring specific reporting on individual forms of finance (Art. 37 CPR).
- **Most importantly the annual implementation reports and progress reports will be abolished.** Instead the E-Cohesion system will be developed into an Open Data Platform for the transmission of quantitative information. This will build on the transmission of the most up-to-date information in more frequent intervals (six times a year) (Art. 35-37 CPR).

The changes offer a potential to simplify and reduce the administrative workload to programme authorities. At the same time, the increasing frequency of transmissions holds the risk of increasing workload.

The actual effects of the proposed simplification measures depend largely on how programme authorities translate them into daily routines, i.e. whether Managing Authorities manage to develop a swift and straightforward approach to the frequent reporting of quantitative information which is less burdensome than the annual reporting on quantitative and qualitative information. The key question will be whether Managing Authorities reduce the amount of information collected from beneficiaries to what is strictly required for reporting in the Open Data Platform.

Lessons learnt from the application of financial instruments in the periods 2007-2013 and 2014-2020 illustrate the relation between reporting and risks. For instance less monitoring and data collection make it difficult to monitor if the money is really spent and not simply allocated, i.e. the cash flow. In fact, the 2014-2020 regulatory framework reduced this risk by demanding reporting rules related to financial instruments.

2.7 Proportionality (incl. Small Project Funds)

Proportionality is an important feature of any simplification debate in Cohesion Policy. Indeed, financially small projects have proportionally higher administrative burden (for beneficiaries) and administrative costs (for programme authorities) than financially larger projects. This results from the number of administrative tasks and their workload that vary little in relation to the financial size of an action.

The CoR argues for more proportionality, so that the size of the administrative burden takes into account the inverse proportion, meaning not only the size of the project as a whole, but particularly the amount of aid granted. Furthermore the proportionality issues come into play with regard to state aid, audits, controls and the application of audit findings. Making things more concrete, the CoR argues for Small Project Funds (especially in cross-border cooperation) that support people-to-people projects, tourism and missing transport links.

Proportionality is also a key issue of the simplifications put forward in the CPR. As for the audit dimension, there is a focus on more proportionate controls (Art. 68(2) CPR) and approaches to audits (Art. 77-79 CPR). When it comes to the administrative work related to small scale projects, the plan to

extend the use of SCOs especially for operations below 200,000 EUR has huge potential.

In addition, the Small Project Funds within Interreg follows the ideas put forward by the CoR. It implies simple implementation arrangements for selecting smaller projects, as long as the overall volume of the Small Project Funds does not exceed EUR 20 million or 15% of the programme. Players implementing projects under Small Project Funds are considered final recipients and not beneficiaries, thus reducing their administrative burden (Art. 24 ETC). The obligatory use of SCOs is further reducing the administrative and control burden for the final recipients.

The increased focus on proportionality and proportionate controls holds considerable potential to reduce the administrative workload of LRA. This concerns both those that are Managing Authorities and those that are beneficiaries. However, the envisaged simplifications also hold considerable potential for gold-plating which may counteract possible simplifications, in particular if more verifications and audits are performed outside the scope of the CPR.

The Small Project Fund will be a notable simplification for all LRA which so far have been treated as beneficiaries if implementing small Interreg projects. In the future they can be involved as final recipient rather than as beneficiary.

3 Cases in which the CPR introduces innovations not foreseen by the CoR suggestions

In some cases it appears that the proposed CPR introduces simplifications which go beyond the proposals and recommendations made by the CoR.

Financing linked to performance instead of costs. Under the heading of faster and simpler delivery, the CPR simplification on financing not linked to costs at programme level can be found. This is a new option allowing for payments from the Commission to a Member State or region, linked to the achievement of pre-agreed results/outputs or completion of policy actions or processes. This option is the continuation of the ‘payments based on conditions’ introduced in the Omnibus. It represents an option for a shift from compliance to performance in the implementation as it changes the focus from costs, reimbursement and checks linked to individual projects to tracking deliverables and results for the projects, a group of projects or schemes (Art. 46 and 89 CPR).

Potentially – depending on the implementation details – this can imply a substantial refocusing of Cohesion Policy implementation as well as a major simplification for programme bodies and beneficiaries.

Clearer rules on fund recycling. In particular for financial instruments, the re-use of resources paid back is a constant issue. The rules on re-use of returning resources, presented in the CPR, have been made simpler and clearer. This enables a smoother flow and transition from one programming period to the next (Art. 56 CPR). Clearer rules limit uncertainty on the regulatory requirements and thus limit the risk to gold-plating. In addition the proposed rules may reduce the workload for the management of transitions.

Technical assistance reimbursed in line with implementation progress. While CoR opinions do not propose changes to the arrangements for reimbursement of Technical Assistance, the CPR presents a changed approach to reimbursing Technical Assistance (Art. 31 CPR). The positive side of it is that the accounting for Technical Assistance will become easier, as it will be turned into a flat rate instead of reimbursing actually occurred costs. This positive effect, however, comes with two potential downsides. Firstly, the percentage for Technical Assistance (i.e. ERDF/CF⁹ 2.5%, ESF+ 4% or 5%, EMFF 6%, AMIF,

⁹ Technical Assistance levels for Interreg are regulated on the ETC regulation (Art. 6 ETC) differentiating between a range of different cases.

ISF and BMVI 6% of the eligible expenditures), might not be cost covering for all programmes. Secondly, the Technical Assistance will be paid as flat rate in proportion to progress in implementation of a programme. This will imply rather low payments at the beginning of the programming period, which in turn requires more pre-financing of Technical Assistance over a longer period of time. This may imply additional difficulties for LRA acting as Managing Authority.

4 Cases in which the CPR neglects or considers CoR suggestions only partially

The three assessed CoR opinions also contain recommendations and ideas which do not seem to be reflected in the CPR. In this section those are outlined that appear to be particularly important for LRA with a potential to positively impact on LRA Cohesion Policy involvement, so these recommendations can be further emphasised on the current debate if necessary.

4.1 One-stop-shop

EU and national financing are often handled separately with different sets of rules and reporting systems. As all mechanisms have their own genesis, purpose and context, a multitude of mechanisms and systems have emerged over past decades. However, for many users this creates confusion and additional administrative work if they are involved in different EU and/or national funding mechanisms.

The CoR suggests the establishment of one-stop-shops at national/regional level to help beneficiaries handling ESI and non-ESI funds in parallel. In short, a standardised user-friendly electronic system would minimise the documents to be scanned and downloaded as they may be used several times for different funding options. This would require a more flexible approach to data sharing and integrated E-Cohesion systems to allow for developing a one-stop shop that reduces the form filling burden for beneficiaries and managing authorities.

The CPR does not make it mandatory to develop E-Cohesion systems in a way that it covers more than one programme or fund. The CPR emphasises the development of E-Cohesion systems for the exchange of all data between beneficiaries and programme authorities, as well as for the exchange of data between programmes, Member States and the Commission (see Art. 37 and 63 CPR). This includes also the development of an Open Data Platform for Cohesion Policy at European level.

Member States and programme authorities favour the development of one-stop-shops. In support to that, CoR could re-emphasise the added value of one-stop-shops, for example by sharing good practices, promoting forerunners, or develop an Open Source application at European level which then can be used by Member States and programmes and adjusted to their specificities and needs.

In this regard, lessons can be drawn from the Interact initiative on development of an Open Sources system for E-Cohesion in Interreg when the first wave of programmes moved to electronic data exchange with beneficiaries.

4.2 Trust building

Over time, Cohesion Policy has developed an increasing focus on controls and compliance checks. This is largely an expression of distrust between the different players involved in the shared management system. The distrust and control culture has gradually led to increasing administrative costs and burden, and to gold-plating by national and programme authorities. Fearing possible control findings, many players add additional requirements or apply an extremely narrow interpretation of regulatory frameworks.

Cohesion Policy is becoming increasingly complex and complicated, mostly due to the lack of trust among different political and administrative levels. To turn things around, the delivery system must be based on greater trust among all the players involved (authorities at EU, national and local and regional level).

Therefore the CoR advocates instituting and applying a principle of mutual trust between the individual players in the implementation process. This could e.g. be done through a genuine contract of confidence between the Commission, the Member States and their regions for managing and auditing Cohesion Policy and combating fraud.

Trust cannot be prescribed and the idea of a contract of confidence has not been taken up in the CPR. However, the CPR contains a number of aspects which may lead to more trust based management approaches. Among the changes are more proportionate controls and audits, reduced number of verifications, incl. shifts to risk-based verifications of payments, single audit arrangements and financing not linked to costs, and more emphasis on SCOs.

High levels of distrust increase administrative costs and burden and imply an increasing shift from performance to compliance. In the long run this hampers achieving overall Cohesion Policy objectives, and generates unnecessary gold-plating. The above mentioned changes hold the potential for establishing a more trust and result oriented approach to Cohesion Policy and should be further advocated and stressed in the implementation.

4.3 CPR covering more than one programming period

Every change costs time, money and resources. For a long time, it has been argued that the biggest simplification possible in Cohesion Policy is to avoid any changes of the regulatory framework (not just within a programming period but also between programming periods).

The High Level Group underlines new regulations put in place every seven years imply unnecessary workload and costs for programme bodies and beneficiaries. Consequently, it argues for cleaning up the regulations and removing unnecessary requirements, so that they do not need to be re-written for every programming period. In consequence, programmes could be modified more easily.

The CPR is clearly linked to the programming period 2014-2020, some measures have been undertaken to clean it up and ensure greater consistency over time. Indeed in many cases unnecessary requirements have been removed and the document has become leaner. It is also meant to be stable over time and not followed up by a series of additional documents providing further interpretations and details at a later stage.

As for continuity across programming periods, the CPR provides that the designation of authorities will be largely ‘rolled over’ from the current to the next programming period. This at least allows for more stability and less workload concerning the setting up of the management system (Art. 72 CPR).

Also programme modifications (albeit only within the programme period) will become easier, as no Commission approval is needed for non-financial transfers within a programme) nor for minor corrections (Art. 19 CPR). In addition, combining the technical adjustment process with the performance review in 2025 implies that there will be only one programme revision throughout the programming period and this will not require a revision of the Partnership Agreement (Art. 14 CPR).

Building on experience and capacities can be re-emphasised by CoR. Elaborating further on the simplifications introduced and the possibility to ‘roll over’ the designation of authorities, it should be considered whether a ‘roll over’ of programmes – with minor adjustments – should be considered for post 2028. This would, however, require stability of the regulatory framework beyond one programme period and also the necessary preparatory work in the programme reviews in 2025.

4.4 Overarching policy frameworks for Cohesion Policy

Overall policy frameworks providing a clear framework for Cohesion Policy are useful for general policy coordination. As Cohesion Policy is meant to address regional disparities in Europe, such a framework would benefit from a clear territorial dimension and may even include some kind of territorial impact assessment.

The CoR advocates a new Common Strategic Framework covering all EU policies and Funds with a territorial dimension to ensure strategic consistency, synergies and equal treatment of funding instruments and avoid administrative redundancy. Going beyond this overall policy framework, the CoR also reiterates its call for a new territorial vision that would bring the 1999 European Spatial Development Perspective up to date. Through a place-based approach this strategy could be used in the post-2020 programming period to help the EU Funds deliver on the ground. This could be complemented by a proper Territorial Impact Assessment of Cohesion Policy to measure the benefits of the simplification of ESIF and to include input from local and regional experts.

The CPR envisages no more Common Strategic Framework and considers this abolishing of a strategic policy framework as simplification. It argues that this implies one less layer in the programming process for ESIF post 2020.

While the CPR has made a step forward with regard to the single rule book, it actually took one step back with regard to providing a single and coherent policy framework and objectives for EU policies and the spending of the EU budget. Certainly the attempts made by the Common Strategic Framework and Europe 2020 left room for improvement. However, they made efforts to coordinate policies and provide a coherent framework. Such a framework – also taking into account the territorial dimension – would help to ensure that all EU policies make a joint effort towards common objectives and fight the recent social, economic and territorial fragmentation of the EU.

4.5 State aid exemption

State aid rules ensure equal opportunities and support the functioning of the EU internal market. ESI Funds under shared management have to comply with these rules. Application of this set of rules results often in high administrative costs

and burden. Programme authorities and beneficiaries consider the rules as complicated, leading to different interpretations and gold-plating¹⁰.

The CoR argues to exempt ESIF from state aid rules. The main principle for Cohesion Policy is to ensure equal conditions for less developed regions. CoR therefore views Cohesion Policy as deliberate market distortion and hence argues to exempt these policies from applying state aid rules. Moreover, state aid rules may discourage beneficiaries to use ESIF if they are familiar with Funds managed at EU level for which state aid rules do not apply.

Furthermore, state aid is often subject to different interpretations in different Member States. In particular, Interreg programmes and beneficiaries experience the negative consequence of these differences, reducing the legal certainty and limiting the quality of projects.

State aid remains applicable to all ESI Funds under shared management. Formally the CPR does not address state aid rules. Hence no corresponding simplification measures are listed among the 80 simplification measures introduced in cohesion policy 2021-2027. The CPR only mentions specific cases in which state aid rules apply.

Following the HLG recommendation, the added value of state aid exemption could be re-emphasised. This includes the possibility to further align and make synergies between ESI Funds and centrally managed funds, including Horizon 2020, COSME, EFSI, and financial instruments managed by EIB.

4.6 Provisions against retroactivity

In the course of the implementation of Cohesion Policy, it happens that ambiguities of the regulatory frameworks are discovered. In the past that could lead to additional clarifications which in some cases impacted retroactively. Such cases caused irritation and uncertainty among players in the ESIF community.

The CoR generally stresses, that the regulatory framework should be unambiguous and should not be changed in the course of implementation. On no account should guidelines be retroactive. In some cases (CoR opinion

¹⁰ See for example Böhme, K., Holstein, F., Toptsidou, M., Zillmer, S. (2017). Gold-plating in the European Structural and Investment Funds. European Parliament. Policy Department B: Structural and Cohesion Policies.

5838/2016), the CoR position is less rigorous and argues that retroactive effects should be removed, unless they put beneficiaries in a more favourable position.

The simplification handbook on the CPR argues that the number of empowerments – regulating operational details in implementing or delegated regulations after the CPR has entered into force – has been reduced significantly as compared to the 2014-2020 programming period. This should increase legal certainty and reduces potential delays. Although this does not prevent retroactive guidelines etc., it seems that in the CPR some provisions have been taken to reduce their likelihood.

As retroactive changes of the regulatory framework cause fear and provide reasoning for gold-plating, it should be continuously stressed that such changes are to be avoided. If they happen, they risk offsetting the trust in the regulatory framework and counteract possible effects of simplification efforts made in the CPR.

4.7 Further audit simplifications

Section 2.2 describes the relevance of audit and control arrangements with respect to simplification efforts, and the proposed CPR innovations following the CoR proposals. This section focuses on those CoR suggestions regarding audits which were not considered in the proposed CPR.

The CoR proposes a number of additional measures to simplify audits. It calls for provisions facilitating the use of national audit methods, increased reliance on national rules and more flexibility to accommodate existing national checks and procedures.

The CoR stresses the importance that fraud and unintentional error are not to be placed on the same level in order to establish a climate of trust and to avoid that stakeholders feel *a priori* suspected of possible wrongdoing.

Moreover, the CoR asks to specifically investigate the possibility to raise the materiality threshold beyond the error rate of 2%, to 5%, given that international standards do not prescribe such thresholds, and that the threshold of 2% is not appropriate in the context of Cohesion Policy projects.

The CPR does not follow most of these suggestions. The CPR proposal makes significant steps toward the recognition of national audits and rules: audits could be based on national rules only, in the cases mentioned in Art. 77(a). However, Commission audits will still be performed in parallel to national audits, the

Commission still holds the right to take part in national audit activities, and internationally recognised audit standards are still required.

The CPR proposal generally avoids differentiated treatment for the cases of fraud and non-intentional irregularity. Fraud remains subject to investigations by the European Anti-Fraud Office (OLAF), and the European Public Prosecutor's Office. The only exception is the limit to Commission audits to be carried out within three years following the acceptance of the relevant account, which does not apply in case of suspected fraud.

The proposed CPR rejects proposals to modify the materiality threshold from an error rate of 2%. The Commission argues that such a modification could be considered in the eventuality that proposed simplifications cannot be implemented or the number of controls is capped. Only for these cases an increase of the error rate could be justified.

The proposed CPR innovations partially respond to CoR positions. A principle of proportionality in audits is substantially adopted in the CPR proposal. In the hypothesis that the mentioned provisions are effectively implemented, instances for the recognition of national audits and the raising of the materiality threshold could be considered less relevant. The differentiated treatment of findings of fraud and unintentional errors has a potential to reassure programme bodies including audit authorities, therefore potentially limiting motives for gold-plating in the form of excessive auditing and verifications. This potential could be better exploited were the difference in treatment not limited to the presence of criminal charges.

5 Cases in which the CPR goes against CoR suggestions

While the above points merely address issues where the CPR does not correspond to CoR opinions appropriately, there are also cases where the CPR risks opposing interests raised in CoR opinions. The most relevant examples are:

- **Fewer pages.** While the CoR stresses that merely reducing the number of pages of regulations and guidelines is not a simplification, the CPR handbook emphasises the reduction of words in the regulation by almost 50% (together with simpler and clear wording) as simplification. Fewer pages does not imply increasing clarity. In particular when covering more funds the terminology used may be perceived different by different actors.
- **Contribution to InvestEU.** While the CoR argues against the possibility of shifting resources from Cohesion Policy to centrally managed programmes or to increase the risk-bearing capacity of the European Fund for Strategic Investments (EFSI), the CPR includes provisions to enable voluntary transfer of resources towards InvestEU instruments to benefit from an EU-level budgetary guarantee mechanism (Art. 10 CPR). Member States can transfer of up to 5% of programme financial allocations from any of the funds to any other fund under shared management or to any instrument under direct or indirect management.

6 Conclusions and policy pointers

Rules and requirements for the management and use of shared management funds have been made easier for LRA in different aspects. This includes:

- increased harmonisation of rules with the proposal of a single rule book for seven funds under shared management;
- introducing a single audit approach;
- increased flexibility to change the programme and adjust it to changed territorial needs;
- measures for increasing the uptake of SCOs;
- enhanced emphasis of the territorial dimension;
- easier reporting rules;
- increased emphasis on proportionality.

The recommendations put forward by the CoR and the CPR proposal are similar in these cases and no further actions are required. For other aspects the opinions from the CoR and the proposed CPR deviate more.

The CoR may consider strengthening their position regarding the coupling of financing and performance, rules on fund recycling, and technical assistance reimbursed in line with implementation progress. For these aspects the CPR proposals and simplification measures are not discussed in CoR recommendations expressed in the opinions 8/2016, 5838/2016 and 4842/2017.

Other aspects need to be re-emphasised. This includes primarily the points raised by CoR that are not sufficiently considered in the CPR as well as points where CoR opinions and the proposed simplification measures may be contradictory. In addition to the recommendations included at the end of each section of chapters 3 to 5, the following provides a few complementing policy pointers.

Underline the added value and use of one-stop-shops as single point for regional programme authorities and for beneficiaries. Good practices at national levels as well the Interact initiative for open source systems could be disseminated to stimulate more good initiative in this direction. This supports the promotion of these initiatives and may encourage new ideas.

Emphasise the importance of trust building in the shared management system, as a key element in the prevention of gold-plating and for the reduction of administrative costs. This could be done by exploring the possibility of introducing contracts of confidence or similar initiatives.

Stimulate the use of harmonised terminology. In support of increased efforts to advocate one-stop-shops as well as further encouraging a harmonised approach between funds actions should be undertaken to harmonise terminology between funds.

Stress the importance of building experience and capacity. Limiting the number of regulatory changes is often considered as a key simplification measure. Limiting the changes supports learning and capacity building. Subsequently, applying the partnership principle, this knowledge is shared with LRA.

Re-emphasise the added value of overarching policy frameworks, including long-term visions or strategies ideally with a territorial dimension. Such policy documents at European level ensure continuity of policies and support emphasising common European objectives and may thus counterbalance recent tendencies of economic, social and territorial fragmentation.

Raise attention to the challenges regarding state aid rules for shared management funds. The existing dual set of rules could be simplified but would need efforts from different DGs. Hence, promote a revision of state aid rules more consistent with the aim of Cohesion Policy and learn from good practices of EU level instruments supporting SMEs.

Continuously stress the necessity to avoid retroactive application of rules and requirements. Guidance documents, delegated acts and implementing acts should be clear in avoiding retroactivity.

Further assess the potentials of differentiating findings of fraud and unintentional errors. More insights on the possible challenges and impacts of differentiating unintended errors and fraud are necessary to better exploit the potentials for reassuring programme bodies and potentially limiting gold-plating.

LRA shall already now consider new possibilities for technical assistance. New proposed rules require a change in mindset among programme authorities. LRA should already now anticipate on the new possibilities for simplification proposed in the CPR. Different aspects could be considered, such as increasing the use of SCOs or making more use of financial and territorial instruments, including ITI and CLLD. The latter allows for delegating different tasks to intermediate bodies: this reduces the number of administrative tasks at programme level and allows to share administrative tasks with a wider group of stakeholders. Moreover, intermediate bodies, often LRA, have better knowledge of the specific territorial needs of their region supporting better implementation of Cohesion Policy.

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