

QUESTIONS TO COMMISSIONER ANDOR

1. Simplification of eligibility rules is a major task and can help beneficiaries substantially to get easier access, especially to the ESF. What has been your record in simplifying eligibility rules?

Commission's answer:

The Commission notes indeed that most of errors detected by the Court for the ESF this year are related to eligibility issues, which may be notably due to the number and complexity of the rules to be applied by the final beneficiaries.

The initial regulatory framework for the period 2007-2013 already contained a number of simplifications linked to eligibility rules, such as:

- the possibility to declare indirect costs on a flat rate basis for ESF (Reg. 1081/2006)
- the obligation for Member States to set eligibility rules at national level (Reg. 1083/2006). The rules set at Community level by the Regulations on Structural Funds are limited to essential common requirements and leave to the Member States a large margin for specifying the eligibility conditions according to the specific needs of their operational programmes.

Further simplified costs options were introduced from 2008 to 2010 through amendments of the initial regulations i.e. the

- : possibility to declare indirect costs at flat rate extended to all Funds (already in force since 2006 for ESF), and the declaration of expenses on the basis of standard scales of unit cost and lump sums.

On 28 Jan. 2010, the Commission has also issued a guidance note to the Member States in relation to these new possibilities for cost declaration (including the audit approach).

However, national eligibility rules are also a source of errors (for example, three quantifiable errors in the audits of the Court in 2009). This could call for a simplification exercise not only on the part of the Commission, but also of national authorities which the Commission is of course ready to support.

2. Can you give more details on the assessment of the effectiveness of simplifications?

Commission's answer :

At this stage it is not possible yet to evaluate the full extent of the impact of the simplification measures, most of them having been adopted within the simplification packages in 2008, 2009 and 2010. The full effects of simplification measures are expected to be progressively visible in the coming exercises. Anyway some effects are already visible in the positive trend concerning the error rate in the Cohesion area witnessed by the Annual Reports of the Court of Auditors in the last three years.

3. What are your plans in order to simplify eligibility rules related to the ESF in the future?

Commission's answer :

The post-2013 regulatory framework will have to continue on the simplification path already started in the current financial period. In the budget review communication, the Commission proposes to further reduce the administrative burden for recipients of funds, concentrating on results and European added value.

In its Communication on the conclusions of the 5th Cohesion Report¹, the Commission proposes to examine a number of targeted changes with a view to further increase the effectiveness of the delivery system in Cohesion policy. This includes thematic concentration to build the necessary critical mass, greater use of conditionality and incentives, including the use of output or result-based elements for disbursement funds and the possibility of a performance reserve, and a stronger role of evaluation. Simplified costs declaration, such as lump sums and standard scales of unit costs will be further promoted.

However a further simplification exercise must not be limited only to the Commission, but also to eligibility rules determined by national authorities.

4. The ECA annual report says that regarding the Declaration of Assurance of DG EMPL reservations were quantified at 11,9 million euro for the 2000-2006 period and 75,2 million euro for the 2007- 2013 period. What was the reason for these reservations?

Commission's answer :

Reservations made in the 2009 Annual Activity Report of DG EMPL's Director general are based on the existence of system deficiencies in the management and control systems in a series of operational programmes:

- for the programming period 2000-2006: reservations are linked to 21 operational programmes: BE (5OPs), DE (1 OP), ES (4 OPs), FR (5 OPs), IT (6 OPs);
- for the programming period 2007-2013: reservations are linked to 38 operational programmes: BE (1 OP), DE (8 OPs), ES (22 OPs), IT (4 OPs), LU (1 OP), RO (2 OPs).

For 2007-2013, specific reservations were made on 5 German OPs and 20 Spanish OPs due to a disclaimer of opinion given by the Audit authority in the Annual Control Report at the end 2009. In addition, at the date of the report, for one Spanish OP , the Annual Control Report for the OP was not yet received and, for another Spanish OP, the Compliance assessment report had not yet been submitted by national authorities. It was still awaited by Commission services at mid-November 2010.

For these operational programmes in reserve, the management and control systems were not in conformity with the principle of sound financial management and/or were unsatisfactory leading to a high level of estimated risk. Therefore DG EMPL could not

¹ COM(2010)642 of 9 Nov. 2010

give reasonable assurance and had to make a reservation. The weakness affects the legality and regularity of the payments concerned and the management systems in place.

With regard to the programmes in reservation, DG EMPL has taken appropriate measures to protect the EU budget where necessary, namely interrupting payments where payments claims were submitted by the Member States concerned and suspending the interim payments on the related programme or priority on the basis of appropriate audit findings.

5. Even though the error rate seems to have improved, further steps need to be taken to achieve even better results. However, at the same time, there is a need for simplification of procedures, in order to reduce administrative burdens and make absorption of Cohesion Policy funds easier. How should simplification and the safeguard of EU citizens' money be both improved without contrasting with each other?

Commission's answer :

The Commission notes indeed that most of errors detected by the Court for the ESF this year are related to eligibility issues, which may be notably due to the number and complexity of the rules to be applied by the final beneficiaries. However, in a system of shared management, a certain degree of complexity is inherent to the different management and control layers from the EU level to the national, up to the final beneficiaries, which are ensuring the practical implementation on the ground.

The Commission fully shares the approach suggested by the Court of Auditors of "simplification with care". The exercise of simplification conducted by the Commission in 2008, 2009 and 2010 aimed at reducing the possibility of errors made by final beneficiaries in costs declaration by promoting the use of lump sums, unit costs and flat rate declaration for indirect costs in operations financed through grants.

Simplification however does not mean a reduction in the Commission supervision on the Management and Control Systems in the Member States. This supervision is expected to increase again in efficiency, where the Commission services will be able to rely on national auditors work on the basis of the single audit principle introduced by art.73 of Regulation 1083/2006. Commission services are currently developing the criteria to be fulfilled for the application of this provision.

As already indicated in the Conclusions to the 5th Cohesion Report the Commission proposes to go further on the way of reducing the administrative burden by adopting common rules on key points such as overheads covering different EU Funds with a view to simplify the use of funds by beneficiaries and reduce the risk of errors and their management by national authorities. At the same time it is also necessary to achieve a greater commitment on the part of Member States to quality control.

6. What will be the next steps of the Commission to simplify the public procurements?

Commission's answer :

The reported failures in applying public procurement rules in relation to projects receiving EU funding cover a wide array of irregularities of a different nature and seriousness. The Commission guidelines on financial corrections applicable to these cases

already take into account the different level of seriousness of the infringements detected: rates of corrections vary between 100% and 2% of the allocated funding.

In the Single Market Act the Commission has undertaken to put forward proposals by 2012. This legislative modernisation will have a double focus:

- Simplification and clarification of EU procurement Directives with a view to striking a better balance between the benefits of the legislation and the costs of the associated regulatory apparatus.
- Providing greater guidance and latitude for Member States which want to use public procurement expenditure to achieve other policy goals (e.g. environmental protection, social responsibility, innovation).

In preparing its legislative proposals, the Commission will draw primarily on 3 key inputs:

- Responses to a Green paper to be published in early 2011. This Green Paper will present concrete suggestions for adapting the Directives to achieve the objectives of the modernisation. The draft Green Paper will invite stakeholder input on a wide range of issues, including a number of options for simplifying EU public procurement provisions.
- Ongoing consultation and work in the area of e-procurement: the conversion of procurement administration holds out the promise of considerable potential for simplification of procurement procedures. Commission's ongoing work in this area will generate ideas on how to better exploit this potential in the existing procurement Directives and concrete projects to accelerate the switchover.
- In parallel, the Commission services are undertaking a comprehensive evaluation of how the current provisions have served their objectives, and the functioning of core procurement disciplines. This information will help to identify key Directive disciplines that have functioned well/less well. It should be underlined that the evaluation examines the impact of the body of procurement Directives, and does not attempt to disentangle the impact of individual Directive provisions.

In sum, simplification will be one of the principal drivers of the forthcoming revision of the Directives. Commission is scheduled to issue its proposal by end-2011, early 2012. Stakeholders and interested parties will have the opportunity to contribute to this process through the consultation process.

In order to clarify the application of Public Procurement rules, the Commission has been carrying out training sessions and seminars on Public Procurement addressed to national managing authorities and national contracting authorities for the past 7 years (at least) in partnership with Member States,. These initiatives are ultimately aimed at raising these entities' level of knowledge and compliance with procurement rules.

7. Do you consider that the Commission has enough corrective tools toward member states to force them to better control the allocation of funds?

Commission's answer :

The allocation of Funds is determined in the operational programmes. In shared management, Member States are first responsible for the legal and regular implementation of the Funds and for financial corrections where necessary for restoring the regularity of expenditure.

The 2007-2013 regulatory framework introduced a preventive procedure for the ex-ante approval by the Commission of the management and control systems on the basis of reports presented by the Member States. This ex-ante approval is a pre-condition for the disbursement of the first interim payment.

Another innovation is also the setting up of an audit authority, on which the Commission may, on certain conditions, base its own audit work.

For restoring the regularity of expenditure, the current Structural Funds Regulation provides the Commission with the following tools in case of inaction or insufficient action of the Member States in this respect:

- The Commission may, without any delay, interrupt interim payments, where there is evidence to suggest a significant deficiency in the management and control systems in a national or a Commission audit report, or where it is necessary to carry out supplementary verifications in relation to a serious irregularity in a payment claim not corrected by the Member State;
- The Commission may suspend interim payments at the level of the operational programme or the priority axis, in case of a serious deficiency in the management and control systems or a serious irregularity in a payment claim or in case of a serious breach of the Member State's obligations in relation to management and control systems or the reimbursement of irrecoverable amounts lost due to its fault or negligence;
- The Commission may impose financial corrections in the course of on-going operational programmes;
- The Commission may impose financial corrections at the closure of operational programmes.

8. The biggest problem with the ESF is not with the funds that have been spent but that lots of beneficiaries have big difficulties to access those funds due to the complexity of the rules. What measures do you intend to take in the view of simplification of the rules?

Commission's answer :

See reply to questions 1 and 3

9. Romania has the lowest performance in the EU with regards to the ESF? What would be your recommendations for Romania and is the Commission willing to take actions against it?

Commission's answer :

Indeed, Romania has a low absorption capacity for the ESF. At the end of October, the rate of reimbursement by the Managing Authorities to the beneficiaries amounted to only 1.15% for the Operational Programme Human Resources Development and 1,98% for the Operational Programme Administrative Capacity Development. The European Commission has repeatedly raised the issue of the low absorption rate with the Romanian authorities at both technical and political levels, including during the high-level meetings that Commissioner Andor had in Romania in October 2010.

Being aware of the high risk of de-commitment, particularly for the period after 2012 and following the Commission's warnings, the Romanian Government has recently adopted an Action Plan that contains a list of immediate and permanent measures to be taken starting with November 2010. The Commission intends to propose to the Romanian authorities a reinforcement of the institutional responsibility for Structural Funds, including the designation of a national co-ordinator and the adoption of an extraordinary action plan, based on the draft already presented to the European Commission.

In negotiating with the Romanian authorities, the European Commission will make sure that the right measures are adopted. It will then closely monitor its implementation and will assist the Romanian authorities in implementing the foreseen measures. The expectation of the European Commission is that such an approach may lead to catching up with some of the delays. Nevertheless, in accordance with the provisions of the Regulation 1083/2006, the European Commission will apply the automatic decommitment for any amounts not used for payment or pre-financing at the end of the n+3/n+2 periods.

ESF 2007-2013 Operational Programs

10. What explains the estimated risk increase from 11.9 M€ (2000-2006 programming period) to 75.2 M€ (2007-2013 programming period). Is it merely stricter controls?

Commission's answer :

For the period 2000-2006, 21 programmes have been put in reservation and 38 operational programmes for 2007-2013.

These reservations and the related amounts estimated at risk may not be compared in the way suggested, as they relate to two different programming periods and a specific risk assessment for each OP, within the framework of their respective control environment applicable to the programming period in question.

Moreover, for 2007-2013, the amounts estimated at risk are mostly related to a disclaimer of opinion given by the national Audit authorities in the Annual Control Report at end 2009 in the absence of national audits on operations (5 German Ops and 20 Spanish OPs) and for one Spanish OP, to the non-submission at end 2009 of an Annual Control Report

and for another Spanish OP, the non-submission of a compliance assessment report . The cumulated financial impact of these specific reservations amounted to 60 million euros.

ESF 2000-2006 Operational Programs

11. First reservation concerns deficiency of management and control systems for ESF from 2000-2006. Each Member State is responsible for implementing the management and control systems. The Commission supervises the national authorities.
- a. For Belgium (estimated risk of 0.4 M€), results were positive for some of the sample controls performed; however, responses on other deficiencies were still anticipated. **Have such responses been received, and if so, what were the results?**

Commission's answer :

The reservation was issued following an audit conducted by DG EMPL at the end of 2009 on the preparation activities of the winding up body responsible for issuing the closure certificates of the ESF operational programmes. Several deficiencies were detected in the procedures and preparation of the closure by the Winding up Body (WUB). These concerned on the one hand the absence of clear procedures to ensure a clear division of responsibilities including the role of the WUB with regard to coordination and review of the work of other control bodies, and on the other hand incomplete system audits performed during the programming period. In general it was found that the preparation for closure of the ESF programmes had started late and was unstructured.

A draft report was sent to the WUB on 08/02/2010. In its reply letter of May 2010, the WUB provided more detailed information on the action plan to address the deficiencies detected by the DG EMPL auditors, including the drafting of procedures, and performance of additional sample controls and system audits.

In its final report, DG EMPL considered the action plan as sufficient and the assurance level was finally considered to be adequate (Category 2 – "works but some improvements are needed"). The effective implementation of the action plan proposed by the WUB will be evaluated in the framework of the closure exercise for the operational programmes concerned.

- b. In addition, for Belgium, it was demonstrated that there was no assurance that the work carried out by the Winding-up Body of the ESF programs in Flanders was compliant with its obligations under Reg. 438/2001 and in particular with the specific requirements set out in articles 10 and 15-17.

i. What assurances are there that in the future the Winding-up Body will comply with the above obligations?

Commission's answer :

The above regulations apply to the programming period 2000-2006. For the current programming period 2007-2013, Regulation 1083/2006 on Structural Funds provides for the creation of national audit authorities . A review of the work by the Audit Authority as

prescribed by Regulation 1083/2006 took place by DG EMPL in the first half of 2010. The level of assurance obtained from the effectiveness of the systems was then classified in Category 2 – "works but some improvements are needed".

- c. For Spain (estimated risk of 1.7 M€, non-conformity of management and control systems (expenditure was declared on basis of administration payments rather than by the projects).

- i. In the AAR, it is noted that the action plan was not yet fully implemented and validated.

1. What were the reasons for the delay, and have steps been taken to ensure that, if necessary, this delay will be limited or eliminated in the future?

Commission's answer :

The amount calculated by the Commission (1.7M€) is an estimation of the risk linked to the Operational Programmes in question. Consequently it cannot be interpreted as an "irregular amount". This calculation depends on the level of deficiencies and risk rates vary from 5% to 10%. As a general rule, payments are suspended for those Operational Programmes which have been put in reservation in the Annual Activity Report. Lifting the suspension is only done when reasonable assurance has been obtained that adequate (financial) corrections have been applied and that systems comply for the future. Two programmes have been suspended: for the first one payments have been resumed in the meantime but payments on the other one are still suspended); a suspension procedure has also been initiated on a third programme.

All remaining issues raised in the Action plans will be settled in the framework of the closure process on-going.

Delays are mainly due to the structure of the operational programmes, which cover a large number of regions, which also share the management responsibilities with the central government. For 2007-2013, there is however only one programme concerned with this division in the responsibilities between the central government and the regions.

- d. For Italy (estimated risk of 9.8 M€) and each country listed above, payments were interrupted and suspension procedures implemented.

On average, how much was irregularly paid before any suspension was begun? What has been done to proactively deter these irregularities before any payment has been sent?

Commission's answer :

The amount calculated by the Commission (9.8M €) is an estimation of the risk linked to the Operational Programmes in question. Consequently it cannot be interpreted as an "irregular amount". This estimation depends on the level of deficiencies and risk rates vary from 5% to 10%. Irregularities have been corrected in the course of the programmes

or will be corrected in the framework of the closure 2000-2006.

As a general rule, payments are suspended for those Operational Programmes which have been put in reservation in the Annual Activity Report. Lifting the suspension is only done when reasonable assurance has been obtained that adequate (financial) corrections have been applied and that systems comply with the applicable regulations for the future. This reasonable assurance can be obtained through the implementation of an action plan by the authority concerned, either by conducting additional audit work to verify the correct implementation of corrective measures or by applying financial corrections.

12. The majority of the estimated error rate was due to eligibility errors resulting mainly from misapplication of rules on public procurement and the inclusion of costs which are not eligible for reimbursement. Which measures of clarification and simplification of eligibility rules have been taken by the Commission to prevent shortcomings?

Commission's answer :

The Annual report of the Court of Auditors states that 2/3 of the errors in cohesion are due to problems related to public procurement rules.

Moreover, as regards the Court's recommendation to the Commission to monitor closely the correct application of the EU Directives on public procurements (par. 4.38), it should be noted that generally ESF operations don't fall under the application of EU Directives, because of their low value or of their nature (e.g. trainings). As regards eligibility errors, see reply to questions 1, 3 and 8.

In order to clarify the application of Public Procurement rules, the Commission has been carrying out for the past 7 years (at least) in partnership with Member States, training sessions and seminars on Public Procurement addressed to national managing authorities and national contracting authorities. These initiatives are ultimately aimed at rising these entities level of knowledge and compliance with procurement rules.

13. According to the Court, at least 30% of the errors found could and should have been detected and corrected by the Members States before certifying expenditure to the Commission. How does the Commission follow up cases where weaknesses were identified in the management and control systems?

Commission's answer:

This 30% ratio (% of errors that could have been detected by national controls) has been calculated for the first time by the Court this year to assess the capacity of the systems to prevent and correct errors found in projects sampled by the Court.

To the Court's point of view, this means that management verifications carried out by Member States – the 1st level checks – should be further improved.

The Commission takes note that 30% of the errors could have been detected and corrected by the Member States before declaring expenditure to the Commission. For the remaining errors detected by the Court (70%), the national authorities did not have sufficient information to detect the errors when declaring the expenditure to the Commission

This means that most of the errors detected by the Court could have been discovered only through a field audit. Indeed it should be considered that, in a multiannual framework, field audits are usually done in further years and not only immediately after the closure of individual operations, as done by the Court because of the deadlines for its reporting. For these cases, it seems that the controls worked but they weren't able to detect the error. It may be necessary to better analyse the design of the control systems for making them more effective, but it is a fact that some errors will remain undetected without a field control.

As every year the Commission will ensure an appropriate follow-up to every finding of the Court and, where necessary apply interruptions or suspensions of payments and, possibly, financial corrections.

14. The data transmitted by the Member States on the financial corrections and recoveries remained not completely reliable in 2009. What does the Commission do to improve the reliability of the received information?

Commission's answer :

See reply to question 14 addressed to Commissioner Hahn.

15. In the Annual accounts of the European Union 2009, (Note 6 - Annex 3, Financial corrections confirmed in 2009) we find several countries (Note 6, Annex 4) which have implemented only a fraction of the financial corrections confirmed in the area of Structural Actions. For example, Spain has implemented 59 million euro out of a total of 2 503 million euro in financial corrections.

The Commission has not used the instrument of *suspension of money* in these cases. What exact levels of financial corrections, as well as other criteria, does the commission use for implementing suspension of money?

Commission's answer :

See reply to question 28 addressed to Commissioner Hahn.

16. The national declaration is an important part of the overall financial audit process. In 2009, as now, only four countries hand in those. What is the Commission's plan to ensure that more countries deliver these reports?

Commission's answer :

See reply to question 29 addressed to Commissioner Hahn.

17. In 2009, the Commission spent 1,4 billion euro in NGO financing (Study: Financing of Non-governmental Organisations (NGO) from the EU Budget. Many NGO:s that receive funding also engage in conversation with the Commission about EU policy as well as outright lobbying the institution. What official strategies exist to assure that this relationship between the Commission and NGO:s does not affect the independence of the Commission as well as the NGO:s that depend on Commission funding?

When will the Commission give a definition of "NGO"?

Commission's answer :

See reply to question 30 addressed to Commissioner Hahn