

High Level Group monitoring simplification for beneficiaries of ESI Funds HLG fourth meeting 21.06.2016 on gold plating

UEAPME COMMENTS ON IMPACT OF GOLD PLATING ON SMEs AND PROPOSALS

1 - General comments

According to the report of the European Economic and Social Committee “Smart governance of the internal market for business” *gold plating occurs when there is over-regulation during the transposition of an EU Directive into national law. Policy intervention is needed to eliminate it or to mitigate its consequences when gold plating is not justified by local circumstances and when it triggers non-negligible additional costs for the business sector.*

By imposing non necessary administrative rules or procedures and costs to SMEs, the different forms of “non -legal gold plating” have two major negative effects on SMEs and in particular on the smallest ones:

- burdens imposed by national and local authorities discourage small enterprises and SME organisations to propose actions in ESIF priorities. According to the results of several UEAPME studies, national and local gold plating is the first ground of SME refusal to get involved in structural funds;
- it creates unfair competition , insofar small businesses and small SME organisations which do not have the human or financial resources to apply additional national/local rules are almost automatically excluded from ESIF benefit

This has significant political consequences in many regions, where the small and micro enterprises consider that ESIF are reserved for large enterprises and feel excluded from European priorities and opportunities. This leads to incomprehension climate and exclusion. Hence difficulties of gold plating faced by SMEs are due to national regulation, they can also create a situation of mistrust towards the European level.

For SME national and regional organisations a certain level of “necessary gold plating” to adapt ESIF rules and procedures might be justified and accepted in order to better integrate the national/territorial specificities and circumstances to the local realities. Unfortunately stakeholders are rarely associated to the definition of this “legal gold plating”.

According to the experience of the majority of SME organisations, the implementation of the subsidiarity principle and the multilevel governance creates often counter-effects:

- due to the culture of independency of administrative bodies, Member states and local authorities feel free to interpret the EU texts, to adopt unnecessary rules or to give priority to national rules at the expense of EU ones.
- -this capacity to freely interpret the EU texts leads to an “Interpretation chain” in which each administrative authority imposes its own interpretation, sometimes in contradiction with other administrative bodies. Some SME organisations underline that authorities create new obligations based on the EU interpretation/explanation texts;
- -in order to limit their responsibilities, the risk of fraud and the controls by the upper level, the managing authorities impose a “gold plating of precaution” by overloading the project managers with cumulative additional constraints (*practice of a 1,2,3 system: EU level requirements are doubled by national authorities and triple at regional level*).

SMEs and their organisations have little or no means to oppose the measures of non-legal gold plating. Due to the lack of alternative dispute resolution systems, they fear counter-measures by the administrative authorities: late payment, more administrative overload, over-control .or political measures: refusal of projects, exclusion from collective actions, etc ...

It is worth noting that non legal gold plating is weak or absent in regions implementing a real partnership, effective monitoring committees and / or strictly applying the “Only once” and the Think small first principles of the Small Business Act for Europe.

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2 – Main problems encountered by SMEs

Practices of non-legal gold plating exist throughout a project process. Below a list of the most significant concrete cases of non-legal gold plating SMEs and their organisations are confronted with.

Interpretation of EU texts:

- differences of interpretation by regional managing authorities or by administrative services in a single region,
- presentation of national/regional private rules as EU rules
- technical EU information or guiding papers becoming mandatory;

Elaboration of programmes:

- different treatments between stakeholders/operators/projects managers in a same region
- different interpretations of eligible actions
- exclusion of SMEs categories due to their size;

No proportionality:

- -irrespective of project relevance and amount, application of the same administrative rules (audit, payment, control)
- no consideration of size /no Think small first approach: documentation and information required exceeding administrative capacity of smaller entities;

Excessive request of information:

- request for additional information or irrelevant information or data on beneficiaries non directly related to the project
- financial and accounting formalities to comply with additional national / local formalities
- difficulties to put in place or refusing the e-Cohesion system
- despite e-Cohesion, some administrative authorities still request the use of papers for confirmation
- difficulties to apply the “Only once principle” of SBA: many administrative services continue to require various information to project managers without exchanging this information with other territorial/national authorities;

Financial management:

- divergences of interpretation of eligible expenses definition and of direct and indirect costs
- different interpretation of public/private costs in particular in case of collective actions managed by SME organisations: for some authorities, the same expenses can be either public or private according to their own interpretation;

Payments:

- in some regions, request of in advance financing as a precondition to accept the project; managing authorities continue to impose to SMEs and SME organisations a pre-financing of projects with their own financial means before receiving administrative approval of project; some authorities have pretended that bridge loans are illegal;
- requirement of a guaranty whose amount and form depend on the managing authority personal interpretation;
- obligation of pre-financing of public part or in advance and intermediary payment; in some cases, administrative authorities refuse to make intermediary payments;
- reluctance to apply the EU rules on delay of payment;

Auditing and controls:

- lack of application of SBA Only once principle: in many cases managing authorities continue to apply their specific rules and to ask for specific audits at each level;
- practical difficulties to apply the result based principle: managing authorities continue to apply classical controls instead of assessing result
- possibility for administrative services to reconsider, in the framework of post random controls, agreements even after the end of project.

3 - UEAPME Proposals

According to SMEs and SME organisations experience, it appears that gold plating is essentially due to:

- personal interpretation of EU texts by administrative authorities,
- lack of explanatory documents for stakeholders and project managers,
- too much flexibility provided by the subsidiarity principle to managing authorities,
- lack of mediation to solve conflicts,
- insufficient partnership,
- too low implementation of the Small Business Act.

UEAPME would like to repeat its great appreciation of and support to the EU initiatives to simplify the ESIF procedure, in particular the partnership principle (CPR Article 5) and the Code of conduct.

UEAPME calls on the HLG Simplification ESIF to put forward the following proposals:

At EU level:

1. give the SBA a legally binding value;
2. adopt a “de Minimis condition” allowing local managing authorities to minimise the administrative procedures for smaller projects in case of efficient partnership with the project manager;
3. adopt and promote a “Multilevel and Multi-actors governance” principle and define the scope of subsidiarity. The governance should not be limited to a vertical subsidiarity “Multilevel governance” in which every level is entitled to add on conditions and rules that risk creating new administrative burdens. To guarantee the efficiency of ESIF, this multilevel governance should be completed with an horizontal subsidiarity “Multi-actors governance” as foreseen in Art 5 CPR, guaranteeing involvement of economic and social partners at national and territorial level;
4. consider that National partnership agreements and national/regional Operational programmes include an obligation to strictly apply the EU regulation without any possibility of gold plating. All specific measures of “Legal Gold plating” to adapt the EU text to the national/territorial realities should be negotiated between Member states and the EU Commission in close partnership with the stakeholders, in particular economic and social partners;
5. make the agreement and payment of OP to national/regional managing authorities conditional to a real involvement of SME organisations;
6. make the Monitoring Committees compulsory at national and regional level with the task to simplify the administrative procedures, avoid non necessary gold plating and define the legal gold plating;
7. elaborate “SME friendly notes” or “Stakeholders friendly notes” in close cooperation with EU representatives to explain the EU texts to non-administrative bodies in order to reduce the risks of interpretation;
8. set-up a precise list of information, data and documents for EU controllers and ensure that the beneficiaries of ESIF has to fulfil only the EU rules to receive the EU funds. SMEs and SME organisations managing a project supported by ESIF should not be obliged to apply national/regional rules if they are more stringent than EU rules;
9. remove random post controls and audits for projects that have received an official approval and limit them to obvious fraud situation;
10. disseminate good practices on measures launched at national/regional level to reduce non legal gold plating;
11. encourage direct contacts between EU Commission geographical desks and SME organisations.

At national/territorial level:

1. implement the Think Small First and Only Once principles of SBA, even if the SBA has not been included in national/regional law;
2. improve the information and training of national/territorial stakeholders,
3. give to national monitoring committees a more concrete and important role by guaranteeing a well-balanced representation of partners (Art. 5 CPR) and their effective involvement and right to vote, not just a formal consultation in view to eliminating unnecessary gold plating and to clarify legal gold plating cases,
4. set-up compulsory territorial monitoring committees involving regional economic and social partners with the task to reduce local administrative burdens,

5. set-up independent “Control boards” at national level, involving representatives of economic and social partners and representatives of managing authorities, to analyse the practical problems of gold plating and propose measures to national authorities to solve problems;
6. put in place at national or territorial level a “mediation system” based on the experience of alternative dispute resolution systems –ADR. This should solve litigations between managing authorities and project managers, notably in terms of conflicts related to difference of interpretation of EU texts, of financing/pre-financing, guarantee requirements payment delays, and auditing/controls. The mediation system could be managed by monitoring committees or control boards.
7. These three supports should be included in and financed by the Technical Objective 11 “Technical assistance”.

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