

Report to the Flemish Parliament

Organization and management of the European Social Fund resources in Flanders

The Court of Audit carried out an audit of the European Social Fund (ESF) resources in Flanders under the *Regional Competitiveness and Employment Objective* for the period 2007-2013.

The Court of Audit examined whether:

- (1) the organization and management of these resources guarantee an optimal use of ESF funds in Flanders;
- (2) the selection of projects is carried out legitimately and optimally;
- (3) the Flemish co-financing policy results into a transparent and sufficient exploitation of ESF funds.

Organization and management of ESF funds in Flanders

The European Commission sets the strategic policy aimed at reaching the Lisbon objectives. The EU member states develop these strategic objectives in their National Strategic Reference Frameworks (NSRF). Subsequently the member states or their regions set up a seven-year Operational Programme (OP) to be approved by the European Commission (EC). The NSRF and the OP were in line with principle of partnership. However, delays in the development and approval processes could lead to underspend the budget of ESF funds.

The policy framework for managing ESF funds consists of European regulations 1083/2006, 1081/2006 and 1828/2006, the Flemish part of the NSRF and the OP. The Flemish government laid down the allocation of financial resources for 2007-2009 in the Flemish Agreement Framework.

The Flemish OP sets out three vertical priorities (Talent Activation and Sustainable Integration, Social Inclusion and Human Entrepreneurship), two horizontal priorities (Innovation and Transnational and Interregional Cooperation) and Technical Assistance. As some of the objectives are related to other European programmes and there is no global registration system for (European, federal and Flemish) subsidies, double funding cannot be excluded.

The EC requires that the funds be mostly deployed to innovation and to reinforcement of regular policy. The Flemish employment policy being entirely geared to the Lisbon objectives, it is difficult to distinguish regular and additional policy (innovation and/or reinforcement of regular policy). However, Flanders complies with the European additionality requirement as far as financial standards are concerned.

The Flemish government has entrusted the implementation of the OP, and therefore the management of ESF funds, by legislative decree to the non-profit organization ESF agency, which has been established by the Flemish government for this purpose, and a cooperation agreement has been concluded for 2008-2010. The ESF agency acts both as managing authority and as certifying authority and the appropriate separation of functions has been provided for. The Inspection of Finances has taken up the function of audit authority and monitors the management and control system. Supervision of the OP implementation has been entrusted to the Flemish Monitoring Committee (VMC).

The missions and composition of this VMC have been provided for by three Flemish government's decrees of 5 October 2007. This regulation's main goal is not to implement the OP, but to carry out the general employment policy. Members of the VMC are the institutional partners of the ESF agency, who are also represented in the agency's board of directors. These partners are the Flemish government departments of Work and Social Economy, of Education and Training, of Economy, Science and Innovation, the Flemish Subsidy Agency, the Flemish Public Service for Employment and Vocational Training (VDAB) as actor, the VDAB as labour market director, the Social Economic

Council of Flanders (SERV) and the Flemish Agency for Entrepreneurial Training (SYNTRA Vlaanderen). The VMC's real powers are wider than the three decrees' provisions, and lack transparency. The VMC is involved in the elaboration of the Flemish Agreement Framework, the OP and the calls for projects, as well as in the external final evaluation of the ESF-programme and in the litigation process. Moreover, it takes the final decision on the projects submitted for funding. In the Flemish agreement framework, ESF and Flemish funds have been earmarked for these institutional partners for the period 2007-2009 and spread among the major priority axes.

To carry out its mission, the ESF agency resorts to the expertise of the VDAB as labour market regulator and of so-called "pilots". Pilots are experts in a policy area related to the OP priorities. In practice, all institutional partners of the ESF agency, except for the VDAB, are pilots. The VDAB and the pilots help to draw up the calls for projects and provide evaluators for the assessment of project proposals. In addition, the pilots and the VDAB can also act as promoters of a project and launch their own calls for projects. Whenever institutional partners act as promoters, they are not allowed to take part in the assessment of their own projects. However, they are involved in every management stage of the ESF programme. Most of them also second staff to the ESF agency according to their own priorities in the scope of the OP. The ESF agency as well as some partners acknowledge the risk of conflicts of interest. The existing control is insufficient to manage conflicts of interest.

Overall, the ESF agency controls the ESF funds in accordance with the OP. Up to end 2009 the ESF agency launched open and closed calls for projects for which candidate promoters could submit proposals. Closed calls concerned funds which were earmarked for the institutional partners under the Flemish Agreement Framework. Open calls were aimed at a larger audience of promoters who meet the established criteria. To this end, the agency used professional tools such as the Quality manual, the Project Cycle Management (PCM) methodology, the system of quality review and e-application. The agency also supported the promoters with information sessions and technical assistance. The procedures were identical for all promoters and the

information about the calls was simultaneously available to all candidate promoters.

In November 2009 the call system was reformed. Whereas previously identical procedures were in principle applied for open and closed calls, this is not the case anymore:

- The closed calls were remodelled into a negotiated public sector contract about implementation modalities of actions agreed upon within the Flemish Agreement Framework. No new calls are launched; no project proposals are submitted or assessed.
- A new category of calls, the “open output focussed calls”, are more aimed at measures like work experience, experience certificates, training for workers or job-seekers and career counselling. These calls are now launched in agreement with the ESF agency and the institutional partners, and with the VDAB-labour market directorate’s approval. This implies that the labour market directorate has now a greater say in matters of ESF Funds than the ESF agency, which had been created with this aim. As a consequence, the institutional partners manage in practice more than half of the funds, which restricts the ESF agency’s coordinating role and is detrimental to transparency.
- Finally, “open outcome focussed calls” are aimed at broad targets within the OP. In this context, the previous procedures and criteria regarding calls, submission of project proposals, evaluation, implementation reports and monitoring are still in force.

Since the VMC changed the management of calls, the ESF agency has kept its integral role only for the standard open calls. The ESF agency now only plays a formal part in the monitoring of the OP.

The shortcomings in the ESF agency’s management that had been noted during the audit were not remedied with these recent changes. The quality manual does not specify the admissibility criteria. The complaint and appeal procedures are unclear as to their object and the decision-making authorities. Besides, complaints can only be filed for financial and technical reasons upon approval of a project proposal, but not with respect to content or against

rejection. In July 2010 the quality manual had not yet been adapted to the new call system that was adopted in November 2009. The e-application was developed for quality review, managing and reporting to the EC.

Communication about the project proposals and decisions runs through this application. The e-application is best suitable for file management, but it is not really user-friendly, incomplete and insufficiently adapted for management and control tasks. The budgetary information in the e-application does not always concur with the accounting data. The institutional partners are not obliged to enter the projects they manage in the application. Therefore the ESF agency is not able to monitor all projects in an identical way, which has adverse effects on the completeness, correctness and transparency and can jeopardize the reporting obligations.

Selection of projects

The first 26 calls for projects of the programming period 2007-2013 (January 2007 up to and including May 2008) and the first 379 submitted project proposals were examined. The decisions concerning the project proposals were examined by means of a representative sample of 111 project proposals. The management and the selection of projects were tested against criteria from EC guidelines.

The launching of the 2007-2013 programme having been delayed, the first calls were not formally published before mid-2007. Some calls were therefore pre-launched and all decisions relating to them were regularized retrospectively. The publication dates of the calls were delayed taking into account the anticipated starting dates of the projects. As a consequence, project implementation often started several months later than planned. Sometimes the project had already started before the contract had been signed, especially in the case of closed calls.

All of the 26 examined calls were in accordance with the OP. The eligible promoters, subsidizable projects and application procedure were all clearly mentioned. However, there was insufficient information about the eligibility criteria, evaluation,

rights and obligations of promoters, the amount of available ESF funds, financing criteria and decision-making authorities. Not enough attention was paid to the formulation of some calls to the guiding principles of the EC, such as additionality, partnership, independence, ownership and the prohibition of double funding. The same applies to Flemish criteria of diversity and equal opportunities and to self-evaluation. However, the ESF agency organizes information sessions about the calls for candidate promoters and provides systematically technical support to help submit project proposals by means of the e-application.

The ESF agency was able to decide on the examined project proposals within the set time limit of twelve weeks. The agency also monitored the optimal use of available resources when allocating the budgets. As for the evaluation of the project proposals, some divergences from the quality manual and the instructions were noted by the Court. For example, the eligibility assessment provided for in the procedure was not applied systematically and some project proposals were approved in spite of their inadmissibility. Sometimes the evaluation was not carried out according to criteria in the call for projects or was based on criteria that were not mentioned in the call. The project proposals and the contracts did not prove the promoters' and partners' independence, nor did they include a declaration stating that they don't receive or apply for double funding, or an additionality declaration. The evaluation procedures between the submission of the project proposals and the final decision are difficult to trace, and the track record of projects in the e-application is incomplete. Information is lacking about eligibility, quality monitoring as well as the funds providers and the amounts being funded. Besides, the real budgetary data about projects were not to be found in the project proposals, the contracts or the e-application, but in the accounting system.

The procedures were entirely geared to the open calls. As far as the closed calls were concerned, the procedures were mostly ignored and the evaluation of the concerned project proposals could generally not be traced. All project proposals for closed calls ended up being approved, whereas only seven out of ten proposals for open calls got approval. The evaluation committee in charge of assessing the project proposals is almost exclusively made up of the ESF agency's institutional partners. The ESF agency recognizes the risk of a lack of independence in these evaluations. Whereas for open calls, this risk is

effectively controlled by the variable composition of the evaluation committee, the evaluation of project proposals for closed calls (notably the new open output focussed calls) was less transparent. The recent changes in the call system at year end 2009 have embedded the established differences between open and closed calls .

Co-financing

Flanders has at its disposal for the whole programming period 2007-2013 ESF funds amounting to 468.87 million euros. In order to strengthen the employment policy as much as possible through the ESF functioning, Flanders has brought its part of the co-financing in the OP from the required 50% to approximately 58%. Taking into account public funds amounting to 550.67 million euros and private funds to the amount of 91.66 million euros, the joint support provided for the whole period reaches 1.11 billion euros. The Flemish Agreement Framework stipulates that approximately 50% of the funds related to priorities 1 and 2 of the OP are earmarked for the institutional partners.

For the period 2007-2009, funds earmarked for open calls were insufficiently used, and as a result 65% of the funds were used for closed calls.

The total public co-financing provided for in the annual Flemish *budgets* is insufficient to ensure co-financing as laid down in the OP, which can prevent the maximal use of European funds. As the ESF agency has not enough Flemish co-financing funds available, particularly for open calls, the candidate promoters themselves have sometimes to look for another public co-financing channel, with an adverse effect on the use of ESF funds.

Moreover, co-financing lacks transparency in the budget. As far as closed calls to institutional partners are concerned, co-financing is included in their allocations and subsidies. Funds for open calls are provided for in the initial budget by a specific commitment authorization for payments to the ESF agency. Besides, the funds are repeatedly supplemented with transfers of appropriations within the budget or with

provisional appropriations. The lack of transparency is compounded by the fact that the ESF agency does not add its budget to the general expenditure budget.

The ministers' reply

The Flemish Minister of Work and the Flemish Minister of Social Economy acknowledge in their joint reply that the audit report contains substantial findings. Some of these are attributed to the start-up problems of the ESF-programme. They report the announced reinforcement of the ESF-agency's internal control. Nevertheless, the ministers hold the view that the non-profit organization structure of the ESF-agency restricts the Flemish governments' opportunities to supervise conflicts of interest and that adding the agency's budget to the general expenditure budget is not feasible. However, the Court of Audit does not share this argumentation.

EU policy developments

Finally, the report has provided an overview of some EU financial management policy developments, since January 2008: the Action Plan of the European Commission towards an Integrated Control Framework, the annual summaries of audits of structural funds and the audited Member State declarations.

The new Lisbon Treaty could lead – via amendments to the financial regulation – to new control and audit obligations for the member states. The European Commission is currently considering its proposals for the revision of the financial regulation.