



Durability of operations

Witold Willak

Deputy Head of Unit DDG.02 Coordination of Programmes

Directorate General for Regional and Urban Policy

Issue

- Follow-up to ECA special report “EU support for productive investments in businesses - greater focus on durability needed” (Special report 18/2018)
- Follow-up to CONT Committee’s discussion on problematic case with durability of projects in CZ in 2007-2013 period
- Follow-up to recommendations from the European Parliament’s discharge of 2019

budget

ECA Special report 18/2018

- **Recommendation 1** - Promoting durability of the results
 - (a) The Member States should promote the achievement of durable results from ERDF financed productive investments at the OP programming level
 - (b) During the approval process of OPs (2021-27), the Commission should pay particular attention to how Member States address durability of outputs and results.
- **Recommendation 2** - Taking durability into account in selection procedures
- **Recommendation 3** - Emphasising durability in monitoring and reporting
- **Recommendation 4** - Taking durability into account in evaluations
- **Recommendation 5** - Consistently applying clear corrective measures
 - (a) The Commission should ensure that Member States apply clear corrective measures including recovery arrangements consistently where projects fail to comply with EU legal durability requirements.



ECA Special report 18/2018

ANNEX VI

Legal durability conditions set by the managing authorities

Specific aspect	AT	CZ (Central)	CZ (ROP)	DE (Lower Saxony)	DE (Saxony)	IT (Central)	IT (ROP)	PL
1. National legislation	<i>Partially</i> In line with EU regulations, but obligations regarding monitoring were lacking.	<i>Yes</i> In line with EU regulations for the purchased assets. The durability period was also valid for the jobs created or saved.	<i>Yes</i> In line with EU regulations for the purchased assets. The durability period was also valid for the jobs created or saved.	<i>Yes</i> In line with EU regulations for the purchased assets. The durability period was also valid for the jobs created or saved.	<i>Yes</i> In line with EU regulations for the purchased assets. The durability period was also valid for the jobs created or saved.	<i>Partially</i> In line with EU regulations, but provisions not transposed in consistent manner.	<i>Partially</i> In line with EU regulations, but provisions not transposed in consistent manner.	<i>Partially</i> In line with EU regulations, but obligations regarding monitoring were lacking.
2. OPs' focus on long lasting project results	<i>No</i>	<i>No</i>	<i>No</i>	<i>Partially</i>	<i>Partially</i>	<i>No</i>	<i>No</i>	<i>No</i>
3. Specific conditions in the financing agreements	<i>Partially</i> Obligation to keep investment for 5 years after project completion. No systematic controls on durability requirements.	<i>Partially</i> Obligation to keep investment for 3 years (SME) after project completion. Reporting for the first two closed accounting periods, not the whole durability.	<i>Yes</i> Obligation to keep assets for 5 years for all enterprises, reporting during the whole durability period.	<i>Yes</i> Detailed conditions for being eligible – types of investment and employment-related conditions. Obligation to keep invested assets and jobs for 5 years. Detailed reporting obligations.	<i>Yes</i> Detailed conditions for being eligible – types of investment and employment-related conditions. Obligation to keep invested assets and jobs for 5 years. Detailed reporting obligation.	<i>Partially</i> Obligation to keep investment for 5 years after completion or until loan is repaid. In two out of three audited measures reporting was foreseen only during first two years after project.	<i>Partially</i> Obligation to keep investment for 5 years after completion, in one measure – to ten years for immovable assets. In one measure reporting – only during first two years after project completion. No reporting foreseen in one measure.	<i>Partially</i> Obligation to keep investment for 5 years after completion. In one measure – to provide reports on results annually within 5 years after completion.
4. Guidance or systematic advice from the MA / Implementing Bodies concerning the monitoring of durability	<i>No</i>	<i>Partially</i> Guidance for applicants and beneficiaries, monitoring not for the entirety of the durability period.	<i>Yes</i> Guidance for applicants and beneficiaries, monitoring for the whole durability period, each project checked on-the-spot.	<i>Yes</i> Effective monitoring mechanisms established and guidance provided.	<i>Yes</i> Effective monitoring mechanisms established and guidance provided.	<i>Partially</i> No specific guidance; only guidance for one measure refers to the maintenance requirements.	<i>No</i>	<i>Partially</i> Guidance approved in 2012, but no exhaustive monitoring required.

Source: ECA's analysis.

EP recommendations

In the discharge procedure for 2019, the EP (in point 301) calls on the Commission to:

- follow up on allegation of alleged fraud regarding the repurposing of vocational training centres; analyse whether similar problems exist in other Member States regarding the repurposing of Union-co-financed infrastructure projects;
- promptly inform the discharge authority about its findings and potential further action following this analysis;
- conduct a thorough analysis on the different national rules on durability of infrastructure investments and premature repurposing and share this analysis with the discharge authority;
- encourage Member States to create national legislation on adequate durability periods beyond the minimum requirements as already existing in a lot of Member States;
- ensure that the sustainability of investments is guaranteed for a longer period.

Our experience with durability of operations

- The provision on **durability** was introduced in cohesion policy already in the legal framework for 2000-2006.
- It represents an important safeguard for the effective and efficient use of Union resources under cohesion policy.
- It has been functioning well and proven its worth over the past two periods and the legislators maintained all key elements of it for the 2021-2027 period.
- In 2021-27, durability period continues to be 5 years (from final payment) with possibility to reduce it to 3 years for maintenance of investments & jobs in SMEs (unless State aid rules apply).

Article 65 of EC Reg 2021/1060 - Durability of operations

- 1. The Member State shall repay the contribution from the Funds to an operation comprising investment in infrastructure or productive investment, if **within five years of the final payment to the beneficiary or within the period of time set out in State aid rules, where applicable**, that operation is subject to any of the following:
 - (a) a cessation or transfer of a productive activity outside the NUTS level 2 region in which it received support;
 - (b) a change in ownership of an item of infrastructure which gives to a firm or a public body an undue advantage;
 - (c) a substantial change affecting its nature, objectives or implementation conditions which would result in undermining its original objectives.
- **The Member State may reduce the time limit set out in the first subparagraph to three years in cases concerning the maintenance of investments or jobs created by SMEs.** Repayment by the Member State due to non-compliance with this Article shall be made in proportion to the period of non-compliance.
- 2. Operations supported by the ESF+ or by the JTF in accordance with points (k), (l) and (m) of Article 8(2) of the JTF Regulation shall repay the support when they are subject to an obligation for maintenance of investment under State aid rules.
- 3. Paragraphs 1 and 2 shall not apply to programme contributions to or by financial instruments or to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.

Two main actions from the EC

- **Standard phrase for observations to 2021-2027 programmes that include business support**
 - *The national authorities are invited to **briefly outline** how they assessed during the programming:*
 - *the risks and factors which may affect the capacity of the businesses to be supported by the programme to deliver results in the long term, and*
 - *the measures they intend to take to mitigate potential issues (if necessary).*

In light of this assessment, Member States are also requested to clarify whether they decide to shorten the durability period for SMEs to 3 years, as allowed by the CPR.

- **Preparing analysis for the European Parliament based on feedback from the Member States (letter to MS on their experience with repurposing of infrastructure projects and national rules on durability (note ARES (2021)6478847 of 21 October 2021))**

Questions asked in the letter

- 1. Has your Member State encountered beneficiaries (in particular private companies) re-purposing Union-financed infrastructure projects (including in enterprises) in 2007-2013 and 2014-2020 programming periods? And if so, what where the remedial actions taken?
- 2. What are current national rules on durability of infrastructure investments in your Member State? Do different durability periods apply according to different types of investments?

Thank you!