



INSTITUTO FINANCEIRO
PARA O DESENVOLVIMENTO
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Evaluation Study of the Model

used in the Drafting of Specific Regulations
of ERDF and Cohesion Fund

2007 - 2013 Operational Programmes

Executive Summary



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Evaluation Team

Luís Madureira Pires (*Coordinator*)

Dulce Santana, Isabel Leal, Filipa Santos,
Pedro Lopes, Raul Marques,
Rodrigo Meireles e Tiago Pereira

A. Oliveira das Neves e Artur Costa (*Consultants*)



1. OBJECT AND METHODOLOGY OF THE STUDY

The purpose of the Evaluation Study of the Model used in the Drafting of Specific Regulations of ERDF and Cohesion Fund 2007-13 Operational Programmes is to *analyse the conceptual model for producing regulations related to access to the ERDF and Cohesion Fund components of the National Strategic Reference Framework (NSRF), at the same time to assess its potential appropriateness for the accomplishment of the objectives established in NSRF and the Operational Programmes implementing it, as well as to evaluate the intrinsic coherence of the model, in an inter-Regulation analysis.*

From a more operational viewpoint, the evaluation also addresses the way the Regulations have been applied by the Managing Authorities and Intermediate Bodies, and the problems concerning management and interpretation which have been ascertained.

The number of Specific Regulations under evaluation totals 67 and concern Regulations of access to ERDF and the Cohesion Fund (2007-2013) for Mainland Portugal (Regional Operational Programmes; Operational Programme “Territorial Enhancement”; and Operational Programme “Thematic Factors of Competitiveness) and the Autonomous Regions of Madeira and Azores (Programmes “Intervir + “and “Proconvergência”).

Given the diversity of Regulations and Operational Programmes of different natures, and because the model corresponds to an innovative way of addressing the territorialisation of public policies in Portugal, within the NSRF framework, special emphasis is given to the articulation between thematic and regional OP’s, an articulation which, within the space of rationality and coherence of the three Thematic Operational Agendas, will have determined a uniform top-down approach in terms of the multiple types of sectoral operations.

The 13 Evaluation Questions which the Study wished to address may be structured around four major blocks of analysis:

- ✓ Appropriateness of the model and of the Regulations to the objectives of the public policy instruments, the intention of which is to regulate and to accomplish the results expected in the operational programmes;
- ✓ A degree of homogeneity within each type of investments of a similar nature, eligibility conditions, selection criteria, decision-making procedures and the financing and payment conditions established by the Regulations;

- ✓ Level of differentiation with which each Regulation has been applied in the different Operational Programmes, as regards its main attributes, including the identification of guidelines and procedures supporting it and the appraisal of appropriate training for the technical staff implementing it;
- ✓ Reasonability of the deadlines established for the different stages of access to the Funds in the Regulations and Notices, the way they have or have not been complied with and the goodness of the mechanisms established for the payment of contributions to the beneficiaries.

The Reference Framework of this Evaluation of the Model used in the Drafting of the Regulations focuses on the following dimensions:

- ✓ Harmonisation and simplification of the existing Regulations in order to guarantee that the same types of projects or beneficiaries are treated in the same way in all territorial areas of the country;
- ✓ Accomplishment of objectives of the Operational Programmes as long as it is commensurate with the fact that there are some areas in these Programmes which have not been regulated or where the existing Regulations have proven to be inappropriate – in relation to the established access rules – to obtain the pre-set results in the Programmes;
- ✓ Practical implementation of the Regulations in different Programmes, especially to evaluate whether they are being applied correctly from a technical point of view with similar interpretations in all Programmes, and not so much to find out whether the form of application best suits the objectives of each Programme;
- ✓ Approach of issues associated with efficiency in the application of Programmes (deadlines concerning the opening of calls, decisions and payments...), taking into account the reasonability of and comparison between Regulations.

The Evaluation is conducted by respecting the existing regulatory framework, i.e., without trying to find alternative models for access to the Structural and Cohesion Funds.

Evaluations undertaken were based on a solid and very detailed analysis of all relevant documents related to each existing Regulation – Framework Regulations, Specific Regulations, Notices, Technical and Management Guidelines and Manuals.

The results attained were then compared with and completed by the interviews that were made to each Managing Authority and to a number of Intermediate Bodies

These interviews were carried out on two stages for each programming instrument: (i) one to the Managerial Staff of the Operational Programmes, of a global nature and covering all matters object of the Evaluation; (ii) and the other, addressed to the Technical Secretariats of these same Programmes, focused on operational issues, especially those concerning 13 Specific Regulations, selected at the beginning.

For this set of 13 Regulations, subject to an in-depth analysis on operational issues, sectoral and regional Intermediate Bodies were also interviewed, which helped obtain a more detailed and differentiated idea of the way these Regulations were being applied on the ground.

In close cooperation with operational questions, the Evaluation Team was given access to the (IFDR) Regional Development Financial Institute's Data Base to consult information concerning decision deadlines in all Specific Regulations, for all published Notices – this information also allowed for the factual evaluation of the diversity of deadlines and how often they have actually been complied.

In order to find out what the perspective of the ERDF and Cohesion Fund beneficiaries was, within the scope of the NSRF, with regard to the Regulations in force, a questionnaire was also sent to a number of beneficiaries from all Specific Regulations with projects approved in order to obtain a qualitative appraisal of several evaluation questions, such as the eligibility and clarity of the Regulations and the appropriateness of the procedural deadlines.

Both the IFDR and the Study Monitoring Group assigned special importance to the question of selection criteria and the way they have been applied in the different regions of the country (this being key to the evaluation of the ability of the Regulations to adjust to the needs of the Operational Programmes they apply on). Besides the special focus given by the Team on this matter, a specific Focus Group was held, in which Managing Entities, intermediate bodies and beneficiaries of the Fund took part.

The results obtained with the different methodological instruments (documentary analysis, interviews, surveys, focus groups) were integrated into the different Chapters of the Study in order to give overall coherence to the document and to enhance each one of its technical components.

2. RESULTS OF THE EVALUATION

In line with the organisation of the Study, the Conclusions are structured by Evaluation Question (EQ), and there are clear connections and links between them, especially when the same attribute is being analysed from different angles.

EQ 1. Is the ERDF and Cohesion Fund General Regulation and Specific Regulation model appropriate for each area of intervention or would it be preferable to have a Specific Regulation per Priority Axis or even per Operational Programme?

The “Specific Regulation per Operational Programme” modality exists in the Autonomous Regions of the Azores and Madeira, whereas the “Specific Regulation per area of intervention” modality has been adopted on Mainland Portugal. The former corresponds to the model generally in force in former Community Support Frameworks, whereas the latter corresponds to the innovative model adopted by NSRF, its most striking features being implemented only on Mainland Portugal.

Whereas the model per types of operation favours the coherence and objectives of NSRF more than that of the Operational Programmes, the previous one instead based access Regulations on the content and objectives of each Operational Programme.

Both models are possible and there is a generalised awareness among managers that it is too late to introduce profound alterations. Therefore, a pragmatic look at the existing model is necessary to see in what way improvements can be introduced in its structure and content to enhance the efficiency and effectiveness of the application of the Funds.

Possible improvements mainly concern the treatment of the most discussed aspect of the present model: its flexibility, i.e., can a centrally designed model, defined in a uniform way for all Operational Programmes, provide sufficient flexibility in terms of access and selection of the projects, thus ensuring fulfilment of the objectives of the different Operational Programmes to which the same Specific Regulations are applicable?

The results of the documentary analysis conducted – on differentiation of the eligibility and acceptability conditions, selection criteria and other relevant items - and the interviews held reveal that the model is complex but allows for a fair degree of differentiation and flexibility between Programmes and Regions to be attained.

Nevertheless, that flexibility is obtained by assigning a perhaps excessive regulatory capacity to the Notices, which in turn results in undesirable effects in the system: lack of stability and predictability for the potential beneficiaries of the Community structural assistance.

Furthermore, there is a lack of harmonisation between Regulations in terms of what should be included in the Notices and the contents of the Regulations that they may adjust, making it too easy for the Managing Authorities to modify policy instruments with repercussions on potential candidates.

Faced with these conclusions, the structure of the regulatory model should find a new balance, by clearly defining the role and contents of each regulatory instrument: General Regulation, Specific Regulations and Notices.

EQ 2. Are the Specific Regulations appropriate for the objectives of the public policy instruments that they intend to regulate?

The analysis on the appropriateness of the Regulations for the policy instruments was carried out at the level of coverage of the Operational Programmes by the different Specific Regulations applied to them.

The Study did not detect areas of intervention that were not covered by Specific Regulations in any Thematic Operational Programme. Nevertheless, as regards Regional Operational Programmes, a number of situations of deficient coverage of types of operations were identified, either because the existing Regulations do not fully respond to the regional specificities (Requalification of rural centres in the Centre Region; Economic Enhancement of rural zones in Alentejo) or because certain types of operations are not eligible for support (e.g., electricity car charging stations in Lisbon) or, because the legislative solutions adopted are not in line with regional realities (e.g., implementation of the Tourism and Leisure Cluster in the Algarve).

On the other hand, regulatory solutions were identified which are not adjusted to regional realities (e.g., the 25% rule for compulsory use of social facilities in Alentejo by residents of neighbouring councils is unfair, given the geographic dimension and the settlement pattern existing there).

EQ 3. Are the Specific Regulations understandable? Were they properly drawn up or have any shortcomings been detected in their formulation?

This Question was addressed from three different angles: the identification of confusing concepts and rules in the current Regulations; the detection of situations in which there is an

apparent lack of harmony between the name of the articles and their respective contents; and, finally, the appraisal by the beneficiaries of the Funds and users of the Regulations on this issue.

The results obtained do not allow for any unequivocal conclusions to be drawn concerning the ability to understand and the clarity of the Regulations. However, the Evaluation is globally positive, given that:

- The number of cases of inconsistency identified between the heading of the Regulations' articles and their respective contents is very small;
- The clarification of concepts or rules of application is not necessarily a matter for the Regulations, and may result in complementary technical documents to interpret certain rules; nevertheless, it is advantageous that such clarifications or interpretations be established at national level to ensure uniformity in their application and equal treatment of the beneficiaries, a relevant number of issues to be clarified having been identified in the Study;
- The beneficiaries are positive about the readability and clarity of the Regulations but, at the same time, they mention the need to contact the Managing Entities to clear up doubts or obtain complementary information; in any case, those Regulations which have less favourable responses than the average were identified.

EQ 4. Is there harmonisation in terms of the concepts?

The harmonisation of concepts is a very broad and transversal Question to the entire evaluation, and includes topics which required treatment within the scope of other issues, such as the clarity of the Regulations and the eligibility conditions of operations and beneficiaries.

In the Specific Regulations there sometimes exists confusion between the concepts of eligibility and acceptability, both for operations and beneficiaries. Although this distinction is made in the ERDF and Cohesion Fund General Regulation – having repercussions on the actual project assessment procedure – it has been ascertained that both in the Specific Regulations and the Notices (where sometimes Regulations are detailed or adapted), this separation is not normally made.

The analysis allows for the identification of these situations and suggests, for clarification, uniformity and effectiveness purposes of the legal texts, to undertake a revision of these different legal instruments in order to give them formal coherence in this matter.

Another element that was looked at in terms of harmonisation was the categories of beneficiaries: there is an abundance of names to identify similar or analogous types of beneficiaries, which justify that an in-depth analysis be conducted. Regardless of the legal architecture which is being used to name public entities (Central Administration, Regional Administration, Local Administration, state-owned companies or companies with majority of public capital, at the central, regional or local level) there are obvious confusions or even erroneous situations which should be corrected (e.g., the notion of local authorities also includes boroughs, it not being obvious however that this local administrative level is also the object of support).

The detailed comparison between the different names is carried out in the Study (the outcome concerning public and private partnerships should also be highlighted), and tips are given for a possible revision of the texts of the Regulations as far as this matter is concerned.

EQ 5. Are eligibility conditions harmonised between Specific Regulations and in situations where the scope of interventions, the nature of the beneficiaries and/or of the operations is similar?

The analysis of the eligibility and acceptability conditions of the operations and of the beneficiaries was conducted for the 67 Specific Regulations and separately for each attribute and type of eligibility condition, namely:

- Eligibility conditions of the operations;
- Acceptability conditions of the operations;
- Eligibility conditions of the beneficiaries;
- Acceptability conditions of the beneficiaries.

A comparison between Regulations was made based on the 15 investment types in which the Terms of Reference divided the Specific Regulations, a satisfactory basis to appraise most of the attributes in interventions of a similar nature.

The in-depth analysis that was conducted allowed to conclude that in general the eligibility conditions of the operations, in comparative terms, are reasonably well harmonised in the different Specific Regulations, in which the scope of the operations is similar.

For each case, discrepancies were identified which require in-depth study from a legal viewpoint in order to attain greater harmonisation.

EQ 6. Are Selection Criteria harmonised between Specific Regulations and in situations where the scope of interventions, the nature of the beneficiaries and/or of the operations is similar?

The analysis of the harmonisation of the selection criteria was conducted on two dimensions:

- Comparison between the selection criteria structures used in each Specific Regulation ;
and
- Comparison between the selection criteria adopted by Regulations of a similar nature.

In order to evaluate whether the adopted criteria could help select, at any given time, the projects that would better attain those goals, an analysis on the selection criteria set out in each Regulation was conducted which was also compared with the quantified objectives set out in the Operational Programmes applied to them.

An initial analysis revealed very different situations in terms of the structure of the selection criteria, as well as their quality and objectivity. While the criteria linked to sectoral policies can be found in most Regulations (55 out of 67), the criteria of a regional nature are not found quite so often (16 out of 67) and perhaps more surprisingly, the Criterion “Contribution for the objectives of the Operational Programmes” appears only in 25 Regulations.

As the NSRF Regulation drawing model was based on a centralised and horizontal logic – i.e., which does not stem from the Operational Programmes, their contents and objectives – it would be reasonable to expect that the Criterion “Contribution for the objectives of the Operational Programmes” would be much more spread.

In relation to the selection criteria used in types of operations of a similar nature, a comparison was made between 13 investment types considered relevant for this purpose and led to the identification of criteria (or types of criteria) which could be included in “similar” Regulations, as the reasons for such discrepancies had not yet been ascertained. However, only a more detailed analysis of the reasons underlying the differentiation (including public

policies founding such access instruments to the Funds) may provide an overall answer to these questions.

Finally the evaluation of the ability of the selection criteria to allow the Managing Authorities to accomplish the goals quantified in the Operational Programmes to which they apply, led to the following main conclusions:

- Only in 38 situations (from among the 177 analysed) can one speak of consonance among the selection criteria and objectives which the Programme wishes to attain;
- There are only 5 situations in which the selection criteria appear disconnected from the objectives to be accomplished;
- In the remaining situations, it can be said that there is a relative appropriateness of the criteria of the Operational Programmes, either because quantified goals were not identified at the start for this type of operation or because the criteria are vague or because they allow, by way of appropriate weightings or application of the sub-criteria, projects which best serve the objectives of the Programmes to be selected.

EQ 7. Are project assessment procedures harmonised between Specific Regulations and in situations where the scope of interventions, the nature of the beneficiaries and/or of the operations is similar?

As far as the application assessment procedures are concerned, two dimensions of the analysis were defined:

- The applications' selection modality; and
- The issuing of official opinions by independent authorities, in the process regarding application' admission and appraisal process.

As to project selection mechanisms, the modality of tender for projects of private initiative, especially aid schemes – has received widespread acceptance but that consensus is far from being obtained in terms of public or equivalent nature projects.

In the Autonomous Regions of the Azores and Madeira there only exists the “continuous” modality both public and private initiative projects. On Mainland Portugal, on the contrary, close to half the Specific Regulations (24 out of 49) only accept the modality of tenders, involving all the Regulations geared towards private projects and a reasonable number of operations of public initiative typologies.

As far as public or equivalent projects are concerned, the Regulations in force in the Operational Programme “Territorial Enhancement” normally work according to the “pre-determined periods” modality, with no tender, whereas the general rule established in the Regional Operational Programmes is for tenders to be launched.

The Study led to the conclusion that in situations of (i) contracting with public authorities (Global Grants with Inter-municipal Communities), (ii) a poor economic basis unable to create true competition between projects (e.g., Alentejo) and (iii) lack of financial allocations (which should imply a consensual definition of a set of key investments to be realised and an indication of their location (e.g., Algarve or Lisbon)), the continuous or by invitation application modalities would be more appropriate for the accomplishment of certain objectives of the Programmes.

As regards sectoral technical opinions, it should be noted that of the 49 Specific Regulations applicable on Mainland Portugal, only in 12 are technical opinions from independent authorities not requested; in the Autonomous Regions the rule is also to request a sectoral technical opinion.

In most cases, the sectoral opinion to be issued constitutes a condition of eligibility, which clearly shows the vital role of the Ministries in determining the eligibility of projects. Only in 14 Regulations are independent opinions requested within the scope of a substantive analysis, i.e., for the purposes of the scores to be attributed to each project.

In addition to this situation – unbalanced in favour of the ministries and which normally requires an extension of the decision deadlines – one should note that in a significant number of cases (15) a sectoral opinion is mandatory as a condition of eligibility but the authority to issue such official opinion is not defined in the Regulation. This information is only published in the Notices, which is deemed insufficient for the potential applicant as it delays the whole process of preparation and submission of the applications.

EQ 8. Are the payment and financing conditions harmonised between Specific Regulations and in situations where the scope of interventions, the nature of the beneficiaries and/or of the operations is similar?

The comparative analysis of the regulatory provisions in terms of payment and financing conditions was carried out by investment of a similar nature typologies, so the discrepancies between financing rates and conditions (e.g. type of support, reimbursable or not) are identified in the Study.

The main conclusions to be drawn from the analysis undertaken are the following:

- The usual financing modality in aid to private investment is the reimbursable grant, whereas with regard to public initiative projects, assistance is usually non-reimbursable;
- The financing rate in the aid schemes varies greatly depending on the operation typology and sub-typology, being nevertheless subject to the aid intensity ceilings set by the applicable Community frameworks;
- The normal maximum financing rate set out in the Specific Regulations for projects of public initiative is of 70%, although in many cases the real percentage is much lower than that value and varies depending on the Operational Programme and on the implicit rates of their corresponding financial plans approved by the European Commission;
- The maximum rate of 75% rarely appears in the Regulations analysed: only in Regulations in the areas of the environment and indirect support to companies;
- The maximum rate established in Regulation (EC) Nr. 1083/2006 – 85% - is only used in the Regulations in force in the Autonomous Region of the Azores, in most Technical Assistance Regulations and in exceptional situations in the Specific Regulation on Collective Actions.

As the ratio and the tree of priorities which will justify the structure of maximum rates between Specific Regulations and the differences ascertained are not clear, the Team can only conclude that, for reasons of transparency towards the beneficiaries, the maximum rates established in the Regulations should be close to those actually set out in the financial plans of the Operational Programmes and not general theoretical rates with no connection to the reality of each Programme.

EQ 9. How are the procedures which make the Regulations operational regulated? Are there Manuals of Procedures? Are there Technical Guidelines? Does the existence of these documents indicate the lack of clarity of the Specific Regulations or is there another reason for this?

The operationalisation analysis of the Regulations subject to a more in-depth study as to their implementation ascertained that the Manuals of Procedures and Technical Guidelines are

fairly generalised and are often produced by Operational Programme and not so much by Typology of Operations.

The Manuals are by nature documents of a broader scope than the Regulations and endeavour to harmonise a number of rules and procedures applicable to each Programme. The diversity of Regulations applicable to each Programme, drawn up with such different philosophies and guidelines, requires that there be some uniformity in terms of the procedures for each Programme, within the margin granted by the applicable legal texts. The Technical Guidelines, in turn, may correspond to general norms, applicable to all or part of a Programme, or concern only a Specific Regulation, and normally annexed to the Manuals of Procedures themselves.

From the analysis made it is possible to ascertain that it is on the Technical Guidelines that clarification and more in-depth explanation of unclear aspects of the Specific Regulation are made. They are therefore crucial to make the rules applicable fully understandable by the beneficiary or the staff of the Technical Secretariat. Issues such as rules of reprogramming, definition of concepts, absolute maximum financing limits, etc. are normally the object of this type of documents.

Notices are also a complementary source of information (e.g., methodology of the calculation of the project merit) and of clarification with regard to concepts and rules set out in the Regulation.

The fact that in 6 out of 13 Regulations analysed no specific Technical Guidelines to support their operationalisation were identified does not mean that these Regulations are clearer than the others. The issuing of rules and complementary guidelines is justified by the level of complexity of the matters covered by each Regulation and by the problems that their practical implementation cause and not so much because of the lack of clarity of each Regulation *per se*.

EQ 10. Faced with the same Specific Regulation or in situations where the scope of the interventions, the nature of the beneficiaries and/or operations is similar, what are the differences in the technical instruments adopted for the application of the Selection Criteria, eligibility conditions and procedures for the analysis of the applications by the Managing Authorities?

The operationalisation analysis of the 13 Specific Regulations to answer this Evaluation Question was undertaken separately for the three attributes: conditions of eligibility and acceptability of the beneficiaries; conditions of eligibility and acceptability of the operations and selection criteria.

The procedures for the analysis of the applications did not result in an autonomous evaluation because they were addressed by the other items studied, especially within the scope of the selection criteria.

The Evaluation approach used attempted to identify, for each one of the 13 Regulations analysed, the main differences in the way they were implemented in practice. For this purpose, the Technical Secretariats of the different Operational Programmes implementing them and the relevant Intermediate Bodies, including Inter-municipal Communities with delegated management powers within the scope of Global Grants, were interviewed.

These elements allowed for the documentary analysis previously made to be tested and complemented, in terms of the harmonisation of the contents of the Regulations and, especially, for the ability of the regulatory norms to adapt to the needs of the Operational Programmes.

With regard to this aspect, it should be underlined that the possibility set out in various Specific Regulations so that the Notices can restrain or adjust the attributes under appraisal, immediately lead to a non-harmonious application on national territory. The fact that in the Aid scheme on Qualification and Internationalisation of SMEs the eligibility conditions are found in the Regulation and not in the Notices guarantees a uniform application which is not normally found in other Regulations.

In relation to the conditions of eligibility and acceptability of both the operations and the beneficiaries, the overall conclusion is that, in the great majority of cases, the eligibility conditions are not the object of adaptation by the Managing Authorities. There are however situations where the published Notices are more restrictive in terms of eligibility conditions than that set out in the Regulations, this being more frequent in the case of operations than in that of beneficiaries. Among the situations listed in the Study, there are situations to be underlined, such as the establishment of maximums and minimums for investments and certain categories of expenditure, specification of certain types of operations in a way which restricts them and the requirement for additional documents to be attached to the application.

As it was mentioned before, the fact of accepting that in a number of cases the Notices define the compulsory independent official opinions to be issued for an application also results in divergent practices among Managing Authorities, some even waiving the need for one or other opinion.

As regards the beneficiaries, restrictions are more common in relation to the categories than the eligibility conditions themselves. The requirement to submit certain declarations, sometimes as an administrative solution to overcome difficulties in applying mandatory rules (gender equality) is the main difference between Programmes.

In case of Global Grants, the Specific Regulations' implementation results in narrowing the range of beneficiaries: only municipalities and their associations and companies, which means there may be adjustments to the eligibility conditions as well.

As far as the selection criteria are concerned, the practices used by the various Managing Authorities to apply and enhance the criteria set in the Regulation are as follows:

- ✓ Definition of sub-criteria and/or other substantive merit assessment parameters, by adapting the criteria defined in the Regulation to the specific objectives of the tender.
- ✓ Non-consideration of the criteria which are not in line with typologies of operations of each call.
- ✓ Attribution of different weights for criteria and sub-criteria defined in the Regulation or of common use;
- ✓ Reinforcement of the enhancement of those criteria considered more relevant for the Managing Authorities, in the methodology for the selection and approval of applications.

As it was mentioned before, it can be concluded from the evaluation made that the model gives way for adjustment to the realities of the Operational Programmes but, as has been seen again, this is obtained through Notices and not through Specific Regulations

EQ 11. Does the staff applying the Regulations consider that they have enough knowledge about them? What repercussions are there when they are modified and what difficulties were felt in their implementation?

The answer to this question can only be found in the interviews given by the Managing Authorities and the self-assessment of their respective training and skills, given the challenges and difficulties with which they have been confronted on a daily basis in the application of the Regulations.

As a rule the interviewed Managing Authorities consider they have enough skills to meet the challenge the new Regulations and procedures have imposed on them; however the human resources allocation is considered in a number of cases as significantly poor for the good and timely performance of their duties in the area of management of Structural Funds (namely, as regards the fulfilment of deadlines).

Some Managing Authorities and especially Inter-municipal Communities consider it advantageous to enhance their existing technical knowledge, namely in terms of public tenders, project analysis, application of rules for revenue-generating projects, etc..

However, the frequent allusion to the lack of a true coordinating body for the operationalisation of the ERDF and Cohesion Fund in both the legal area and the area of harmonisation and practical interpretation of established rules should be stressed.

EQ 12. Are the different deadlines set out in the Specific Regulations for procedures adequate?

As far as deadlines for procedures are concerned, a comparative analysis was conducted between the different Specific Regulations concerning all the phases of the project cycle for which deadlines are set, even if in different normative instruments: (i) deadlines for the submission of applications; (ii) deadlines for official opinions issued by sectoral entities; (iii) deadline for a decision; (iv) deadlines to sign the contract; and (v) payment deadlines.

In the comparisons made, the rule observed is that of heterogeneity between types of operations; even concerning deadlines for signing contracts, the deadlines set vary between 20 and 60 working days.

The deadlines for a decision set out for the aid schemes vary between 60 and 180 days. As for the remaining Regulations they publish deadlines which vary between 5 and 174 days; however, most are somewhere between 30 and 90 days.

The conclusion of the Evaluation Team on the appropriateness of these deadlines is not easy to draw, given that they are normally set in accordance with the means available in the Administration, but are often considered too long by the beneficiaries.

If one takes as an example the RTD or Innovation vouchers for which the time limit for submission of applications is only 30 days but the time limit for a decision is of 60 days, it will be easy to conclude that there is a disproportion between the two; on the other hand deadlines set at 6 months right from the very start are obviously too long.

In addition to this analysis, a comparison was made between the established deadlines and real deadlines, based on the existing data in the IFDR Information System. The conclusion that can be drawn is that the real deadlines are substantially higher than those established: 60.6% of the deadlines analysed were exceeded, 28.5% of these corresponding to a deadline for analysis and decision which was exceeded by twice the number of days initially established.

In addition to the fact that there are practically no deadlines established for important cycles of the project (the most obvious case being that of payment deadlines to the beneficiaries, the only sub-delay established being the maximum duration of IFDR's involvement in the process), it has been seen that, in a majority of cases, the deadlines established are exceeded by the Administration, the main reasons for this fact being quoted as both the lack of technical resources and the lack of deadlines for issuing of a good part of the sectoral technical opinions which are normally established in the Regulations or Notices. This latter aspect is of particular importance in the modality of calls for applications (tenders), where the delay in the technical opinion in a project may have negative consequences on the whole decision making process.

QA 13. Are the support payment mechanisms set out in the Specific Regulations – reimbursement or advance payment – adequate for the types of interventions being financed in the corresponding Regulations?

The payment mechanisms adopted in the Specific Regulations are relatively uniform, being applied in an identical way by all Managing Authorities of the Programmes on Mainland Portugal and even by the Inter-Municipal Communities. Payments handed out as reimbursements, complemented by the possibility of advance payments (against invoice or against bank guarantee) are quite accepted by all the Managing Authorities contacted and as far as the beneficiaries are concerned, the Survey also revealed that they highly appreciated the model.

However, the bureaucratic weight associated with submission, validation and certification of the expenditure was also referred to by all contacted entities (including the beneficiaries questioned regarding the process leading to the payment of assistance).

In relation to the centralisation of payments to beneficiaries normally being centralised in the IFDR, it is a solution which is accepted by all the Operational Programmes on Mainland Portugal, with the exception of the OP for Territorial Enhancement which questions the goodness of the option adopted as in practical terms it implies an extension of the payment

deadline to the beneficiaries (because it always means an additional stage in the payment process of the EU assistance).

The Evaluation Team did not detect a sufficient number of elements to justify that the existing model should be modified.

3. RECOMMENDATIONS

Given the results and conclusions of the evaluation exercise, the Team decided to draw up a set of 10 Recommendations regarding adjustments to be made to the NSRF regulatory model – covering ERDF and the Cohesion Fund – in order to render it more coherent, efficient and simpler.

The Recommendations drawn up are mainly aimed at the Regional Development Financial Institute, IP, as this is the entity, within the organic architecture of NSRF, which has the responsibility of coordinating the implementation of the ERDF and Cohesion Fund in Portugal. Within this framework, it should have the conditions to organise the revision and adjustment process of the Regulations in force, as well as to bring about the necessary consensus with other public actors involved in that process, thus creating conditions to guarantee the success of the operation.

The time factor is also critical in this context, given the level of approvals that has already been reached in the NSRF Operational Programmes, as the usefulness of the revision and adjustment exercise of the Regulation texts is directionally proportional to the speed with which it is possible to publish the revised legislation to still have a significant impact on the implementation of the NSRF.

The 10 recommendations are presented in descending order of importance. The criterion considered by the Evaluation Team for setting a hierarchy of Recommendations was their level of impact on the improvement of the NSRF regulatory model, given the consequences it may have on its operationalisation.

R1. Global revision of the regulatory model in force in order to create a uniform structure, by clearly defining the role and contents of each regulatory instrument: General Regulation, Specific Regulation and Notices

The Evaluation Team recommends that a regulatory model with the following characteristics be adopted:

- ✓ More robust and precise ERDF and Cohesion Fund General Regulation than the current ones, bringing together a broader set of horizontal rules which over the last three years have been defined in a relatively uniform manner by the Specific Regulations.

- ✓ Set of Specific Regulations cleaned of all dispensable texts and in this way simpler and shorter, in which the types of operations, selection criteria and maximum financing rates could contain differences by Operational Programme and/or by regions. Within this context, the division of Regulations into sub-categories of operations in order to ensure that the selection criteria correspond better to each type of operation, may be an option.
- ✓ Set of Notices launching the calls for submitting applications which include the necessary information for potential beneficiaries and the norms directly resulting from the management requirements of the Operational Programmes. These norms should not modify the already existing regulatory framework but may/shall include matters which guarantee a reasonable management flexibility (tender budgets; types of operations put out to tender; territories covered; and calculation method of the operation merit including weighting the selection criteria) to accomplish the objectives set out in the Programme; (e.g., conditions of eligibility and acceptability should remain unchanged in the Notices, such as the categories of beneficiaries – unless directly linked to the more restrictive types of operations or to global grants with Inter-Municipal Communities). When an alteration is justified, it should occur in the Specific Regulation and be applicable in all subsequent calls in order to ensure equal treatment for beneficiaries.
- ✓ Obligation by the Managing Authorities to publish at the beginning of each year, and for a minimum period of one year, the schedule of publication of Notices, including the typologies out to tender and the territories covered for each one at least (should they be limited to the territorial scope of the Programme).

R2. Simplification of the regulatory model through the transfer of a number of rules of a horizontal nature of the current Specific Regulations for the General Regulation, leading to a greater uniformity in terms of the concepts and applicable rules, whenever so justified.

The elimination of mere repetitions, with identical or similar wording, of provisions of the General Regulation in the Specific Regulations as well as the inclusion in the General Regulation of cross-the-board regulatory elements which are missing emerge as key actions in a simplification process of the model.

In multiple Specific Regulations there is a number of rules overlapping with the General Regulation (namely in relation to the conditions of eligibility and acceptability of the

beneficiaries and/or operations, to the obligations of the beneficiaries, the submission of the applications, the financing contract, the cancellation of the contract, payments, monitoring and control, information and advertising and the application of the Law on Administrative Procedure) which were identified. In each case texts to be included in the General Regulation have been proposed.

Besides, a set of areas and topics of a horizontal nature which are not yet regulated and should be have been identified.

In addition to the provisions of sufficient dignity to integrate the General Regulation (or its annexes) other normative documents should be adopted (administrative orders, circular letters, etc.) in order to harmonise and clarify concepts, procedures and actions, the diversity of which does not appear to be justified in similar situations across the country nor ensures equal treatment.

R3. Reinforcement of the stability/predictability of the regulatory model by clearly determining in the General Regulation which matters may be adjusted by Specific Regulation and which will be adjusted by way of a Notice.

The revision of the Model should lead to a better equilibrium between the management requirements of the Operational Programmes and the guaranteed predictability of the public policy instruments to which the potential beneficiaries may have access, giving some time for their programming of investments and preparation.

Within this context, the provisions of the Specific Regulations susceptible to alteration/adjustment in Notices should be clearly indicated in the General Regulation. These possible areas of restriction of the regulatory framework, to be included in Notices, should correspond to those which actually concern guidelines or options linked to the management of the Operational Programmes:

- Budget of each Notice/Tender;
- Type of operations;
- Categories of beneficiaries (only if such restriction is a direct result of the “open” types of operations or the implementation of Global Grants);
- Geographic scope (if narrower than that set out in the Specific Regulation for the OP).

The Notice will naturally be the normal place for the publication of the procedures for the application assessment, the methodology used in the evaluation of the merit of the project and the deadlines for submission and decision.

In relation to deadlines for the different stages of the access system, their inclusion in the Specific Regulations or Notices is related to the political will whether to impose or not reasonable and uniform deadlines for the whole Portuguese Mainland.

R4. Revision of the Selection Criteria to ensure they are better suited to the objectives of the Operational Programmes to which they apply.

The Evaluation Team recommends differentiation of the selection criteria in each Regulation, by Operational Programme, whenever justified. This implies an overall revision of the criteria as a more in-depth evaluation exercise will be required – to be carried out during an initial phase by the appropriate Managing Authorities – in order to detect cases where it will be desirable to modify the current criteria to better adjust them to the requirements of the Operational Programme.

This exercise should be accompanied by further standardisation of the selection criteria structure, not only within one Regulation but also between Regulations “of a similar nature”. The Study proposes a possible selection criteria structure and points out the discrepancies existing in relation to that structure.

At the same time, the analysis conducted on the appropriateness of the selection criteria in terms of obtaining the results quantified and established in the Operational Programmes should be taken into account. It is a question of not only adjusting the criteria for the whole universe of projects which are potentially eligible to each Programme but also to keep in mind the objectives to be accomplished, both in terms of targets and of earmarking expenses.

The selection sub-criteria and their respective weight should not be included in the text or in the annexes of the Specific Regulations, thus guaranteeing the management flexibility of the Programmes over time; the Notices being the appropriate place for such publication.

5. Review of the application selection modalities, in particular the tender modality, in a significant number of cases where other solutions appear more appropriate.

Without questioning the need to assess the absolute merit of the projects as a condition for approval, there are situations in which the tender is currently used as a selection modality and could justify it being replaced by continuous submission or on invitation.

These situations were identified in the Study and may be typified as follows:

- Contracting with public authorities of a sub-regional scope (global grants);
- Regions with poor economic basis and unable to generate true competition between projects in a certain area of intervention; and
- Shortage of financial allocations, which may justify a preference for key investments indispensable for the development of the territory.

Also in the case of Technical Assistance – which has worked under a pre-determined period modality – it is recommended that the model become more flexible and that it move on to continuous submission.

6. Re-assessment of a number of questions linked to the drafting of Specific Regulations and to the relation between them (mergers, splits, overlapping, gaps, bordering or overlapping other funds).

There are certain situations identified in the Evaluation Study which should be carefully weighted in order to address issues which have been ill resolved or that have not yet obtained a solution, namely for having maintained regulatory gaps for the implementation of parts of Operational Programmes.

The main situations of badly defined dividing lines between Specific Regulations were identified and they include primarily the areas of Sports Facilities, Environment and Risk Prevention Management and Monitoring. The overlapping with operations financed by EAFRD and by the European Social Fund requires appropriate treatment, especially in the case of social equipment (crèches, homes for elderly, and so on).

Finally, even though splits and mergers between Regulations are not decisive for the improvement of the performance of the regulatory model, a number of cases have been detected which require in-depth reflection on a better architecture to be established in particular in the areas of the Environment; Risk Prevention, Management and Monitoring; and Transports and Mobility.

Also within this context, some Regulations could be divided into sub-categories of operations (e.g. Regulations concerning Territorial Mobility, Partnerships for Urban or Environmental Enhancement and Qualification actions) so that each type of operation better meets the selection criteria set in the Regulation.

7. Guarantee of reasonability of procedural deadlines as well as their fulfilment by the decision making authorities.

The regulatory model sets out a number of deadlines in different instruments (General Regulation, Specific Regulations, Notices), most of them being established in Notices or in internal guidelines of the Operational Programmes and benefit from a greater flexibility in their determination, even throughout the duration of the Programme. For this reason, there is a diversity of deadlines which apparently have no logic or coherence between them and are sometimes too long.

This is a very sensitive part of the access system, above all because the deadlines applicable to beneficiaries (deadline for the submission of the application, deadline for signing the contract ...) are mostly rigid. Given that there is a very high percentage of deadlines not complied with by the Managing Authorities, there is a very unbalanced situation between the Administration and those subject to that Administration.

Within this context, a re-evaluation of the reasons underlying this situation in order to guarantee better performance is recommended, and the following should be considered:

- The establishment of deadlines for the issuing of sectoral opinions and the attribution of scores to the projects (when this is part of the opinion);
- A better planning of the publication of the Notices and of deadlines for the submission of the projects, taking into account the volume of work and the availability of technical resources;
- The revision of the deadlines for decision-making as often they are too long (normally no deadlines of over 120 days should be set, 90 days appears to be a reasonable period for a decision).

8. Promotion, in articulation with the Managing Authorities, of in-depth training actions, focusing on sensitive areas of implementation of the Structural and Cohesion Funds, and concentration of the necessary knowledge for the management of ERDF and CF in one centre of excellence.

Given the specificity of the matters requiring specific training in the context of the Structural Funds, it is recommended that the IFDR takes some initiative in this area, in line with what a number of Managing Authorities expect. In view of the cases identified in the Study (authorities – Managing Authorities and Inter-Municipal Communities - and thematic areas to

be privileged - especially, public contracting, environment and project analysis and management) a training programme should be defined, with trainers with practical experience in the relevant matters, which would bring about a qualitative leap in the existing areas of competence. In this framework, the mobilisation and inclusion of trainers from Administration itself appears to be indispensable.

From a more global perspective, the Evaluation Team – as it shares the concern frequently mentioned – does recommend the establishment of a centre of excellence in matters related to ERDF and the Cohesion Fund in the IFDR, which will be able to bring together the necessary skills for continued technical and legal support to the Managing Authorities.

9. Revision of the conditions of eligibility and acceptability of both the operations and the beneficiaries and the way the categories of beneficiaries are called in the different Specific Regulations in order to achieve a greater harmony between them, following the work undertaken within the scope of the Evaluation.

The Study addressed the formal issues attached to the concepts of eligibility and acceptability to be able to establish a starting point for the task of harmonising concepts as regards operations and beneficiaries. The same was done for the category of beneficiaries where the profusion of classifications and names, especially in the public sphere, may lead to diverging interpretations on the contents of the same group of entities and in some cases the concepts are inadequate (e.g., that of Local Authorities or Local Authority Administration for Municipality).

As a result of this work, it is recommended that a legal revision of the regulatory texts be undertaken and a uniform classification for the same category of beneficiaries in order to simplify and clarify the Regulations, thus preventing doubts by potential beneficiaries and the Managing Authorities themselves.

Within this context, it would also be desirable to keep the same conceptual structure of presentation of the conditions of eligibility in the different regulatory instruments (General Regulation, Specific Regulations and, should this be the case, the Notices), separating the conditions of eligibility from the conditions of acceptability.

10. Formal enhancement of the NSRF regulations – ERDF and Cohesion Fund.

The inclusion of Regulations – General and Specific – in a classic legislative model conveys greater legal security to all parties and ensures greater effectiveness to the acts published in the Official Journal of the Portuguese Republic, in particular in relation to third parties.

The Team therefore proposes that in the event there is – as recommended – a substantial revision of the regulatory model of the ERDF and Cohesion Fund, the General Regulation should be transformed into a Decree-Law, the Specific Regulations emanating from Orders resulting from such Decree-Law.