

Dealing with Unhappy Customers: How Do Member States Handle Complaints under the ESI Funds?

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The 2014-20 European Structural and Investment Funds regulations include provisions which strengthen the legal framework for examining and handling complaints under the ESI Funds. For the first time, the regulations require EU Member States to provide effective arrangements for examining complaints under their ESI Fund programmes (in Article 74(3) of the Common Provisions Regulation). However, provisions on how such complaints should be dealt with remain vague. This article examines some of the elements such complaints handling systems should include, proposes an analytical framework to assess the effectiveness of such systems, and asks whether imposing more stringent requirements on Member State authorities in this area could further exacerbate the already contested administrative cost of implementing Cohesion policy.

I. Introduction

The 2014-20 European Structural and Investment Funds (ESIF) regulations strengthen the legal framework for the examination and handling of complaints under the ESI Funds. For the first time, in Article 74(3) of the Common Provisions Regulation (CPR), EU Member States are required to provide effective arrangements for examining complaints concerning ESI Funds programmes. This provision was not included in previous Structural Funds regulations, so its introduction raises a number of theoretical and practical questions for public authorities in charge of managing ESI Funds, as well as for the European Commission.

The topic is new and thus relatively under-researched, and there is limited publicly available information on existing ESIF complaints-handling systems and their application. The CPR does not specify how the effectiveness of the arrangements in place should

be defined and measured; it is therefore not clear what constitutes compliance. Based on a literature review and analysis of a sample of 2007-13 ERDF programmes in eight countries, this article interprets what the constituent elements of such systems should be, and suggests an analytical framework that could help define the effectiveness of complaints-handling systems. Section 2 discusses the definition of a ‘complaint’ and what complaints-handling typically involves. Section 3 describes the new provisions for complaints handling in the CPR, and Section 4 explores the domestic frameworks in place in EU Member States to deal with complaints. Section 5 then reviews what is known about complaints-handling systems currently used under ESI Funds. Sections 6 and 7 outline the potential constituent elements for a complaints-handling system and suggest a possible analytical framework to measure their effectiveness. The article concludes with a reflection on the risk that imposing more stringent requirements on Member State authorities in this area may exacerbate the administrative cost and burden associated with Cohesion policy.

II. What Constitutes a Complaint?

The definition of ‘complaint’ varies between Member States, and the important distinction between *complaint* (an issue disputed with a public adminis-

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Article 74(3) of the Common Provisions Regulation¹

“Member States shall ensure that effective arrangements for the examination of complaints concerning the ESI Funds are in place. The scope, rules and procedures concerning such arrangements shall be the responsibility of Member States in accordance with their institutional and legal framework. Member States shall, upon request by the Commission, examine complaints submitted to the Commission falling within the scope of their arrangements. Member States shall inform the Commission, upon request, of the results of those examinations.”

1 Note: Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, available online at <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1303>> (last accessed 20 November 2017).

tration) and *grievance* (an act of public administration that is justiciably contestable before national courts and has access to the General Court (EGC)/Court of Justice of the European Union (CJEU system) is often blurred – both in domestic systems and within EU Cohesion policy.

Typical tasks of a structure in charge of examining complaints (either domestic or under ESIF) are likely to include the following:

- provision of standardised forms for the submission of complaints;
- establishment of a database in which to log all the information examined to settle the complaint, endowed by the safety features required to ensure confidentiality. This is a key challenge according to Brewer in today’s mass technology era, yet it is an issue that is crucial both to protect sensitive information and privacy, and to protect complainants for fears of retaliation (particularly in cases involving corruption);¹
- recording all complaints received and their outcomes, with clear codes/reference numbers, linked to the related documentation;
- acknowledging receipt of complaints, providing the complainant with an indicative timetable for the complaint’s examination and a contact reference number/person;
- informing complainants in writing about the outcomes of the complaints and, if delays arise in the timetable of examination of the complaint, of the progress made, the reasons for the delay and likely target examination date; and
- drafting periodic reports on the complaints received and their outcomes, the rates and times of resolution, and the areas for improvement identified.

Complainants have to be informed of the outcome of the complaint in writing, providing a clear, non-tech-

nical explanation of the reasons for the decision made, and of the consequences that it has for the claimant (e.g. a reimbursement). The response should also include the specification of any applicable further administrative escalation procedures that the complainant may pursue, as well as judicial appeal and other administrative or judicial remedies available and of alternative dispute resolution means that are available. Outcomes may vary and can include:

- the repeal or modification of a decision, or the request that the case be re-appraised (for example, a decision that a project should not be funded or that it be funded for less than the amount requested);
- the activation of a wrongly omitted procedure (e.g. the realisation of an environmental impact assessment or of mandatory consultations);
- a reimbursement to/by the claimant;
- the provision of the explanation of why the case is not upheld.

III. The ESI Fund Regulatory Provisions for Complaints Handling

As noted, the 2014-20 regulatory framework for ESIF strengthens the legal provisions for the examination and handling of complaints. Specifically, Article 74(3) of the Common Provisions Regulation requires EU Member States to provide effective arrangements for examining complaints concerning the ESI Funds. In previous programming periods, the regulations did not contain any specific obligation relating to how Member State authorities should deal with such complaints.

1 Brewer, B., ‘Citizen or customer? Complaints handling in the public sector’ [2007] *International Review of Administrative Sciences*, 73(4), pp. 549-556.

As recently clarified by the Commission in a note to the European Ombudsman, the failure to provide effective arrangements for the examination of complaints constitutes a ‘serious deficiency’ in the meaning of Article 142(1)(a) of the CPR. As such, where Member States do not comply with Article 74(3), the Commission can interrupt interim payments and, in case of serious deficiencies, suspend payments, apply financial corrections and recover payments. To support compliance, the Commission has raised awareness among Member States and drawn attention to the possibility of using Technical Assistance resources to support arrangements for handling complaints.²

Article 74(3) leaves considerable discretion to the Member States in interpreting the scope of such arrangements. The operation of complaints-handling systems will be informed by national norms and rules, which differ considerably across the EU.³ Complaints arrangements can be considered a form of alternative dispute resolution (ADR) and, as noted by Dragos and Neamtu, ‘[t]he panorama of ADR [Alternative Dispute Resolution] in national administrative law is as diverse as the systems of administrative law themselves.’⁴

IV. Member States National Frameworks for Dealing with Complaints

Beyond the requirements of the ESI Funds, Member States may implement their own domestic com-

plaints-handling systems. The form and function of such systems vary according to the state (and reform) of public administration and the influence of trends such as New Public Management – in spite of the convergence on key principles, for example those of the European Commission’s SEM 2000 initiative and 2001 Governance White Paper (openness, participation, accountability, effectiveness and coherence).⁵ NPM reforms, underpinned by a different interpretation of the ‘public’ – as the recipient of public policies and services – as ‘customer’ rather than ‘citizen’,⁶ have led to the introduction of more sophisticated quality assessment tools and to a focus on user satisfaction. The introduction of complaints handling systems modelled on the practices of the private sector is part of these trends. Their take-up, however, like the take-up of NPM innovations more widely, is path-dependent: it differs in scope and pace and is conditioned by the core characteristics of national systems,⁷ historical legacy⁸ and political choice.⁹ For example, in Italy, non-judicial remedies to administrative decisions (including complaints handling) continue to play a marginal role and are only rarely pursued because they are considered ineffective.¹⁰ In France, alternative dispute resolution continues to be mostly associated with private rather than public law.¹¹ In Poland, complaints procedures relating to Cohesion policy were introduced only in 2008, after extensive debates about the legal protection of potential beneficiaries, “because of difficulties in defining the character of decisions, or contracts and therefore the cognition of courts”.¹²

2 Comments of the Commission on the European Ombudsman’s Own-initiative inquiry – Ref. OI/8/2014/AN and Decision of the European Ombudsman closing her-own initiative inquiry OI/8/2-14/AN concerning the European Commission, available online at <<https://www.ombudsman.europa.eu/en/press/release.faces/en/59897/html.bookmark>> (last accessed 20 November 2017).

3 Commission of the European Communities, *European Governance. A White Paper* (25.07.2001), COM(2001) 428.

4 See Dragos, D. C., and Neamtu, B. (eds), *Alternative Dispute Resolution in European Administrative Law* (Springer-Verlag: Berlin, Heidelberg 2014), p. X. See also Dragos, D. C., and Marani, D., ‘Administrative Appeals in Comparative European Administrative Law: What Effectiveness?’ in Dragos, D. C., and Neamtu, B. (eds), *Alternative Dispute Resolution in European Administrative Law* (Springer-Verlag: Berlin, Heidelberg 2014), pp. 539-563, quoted text on p. 539.

5 Hood, C., ‘A Public Management for All Seasons’ [1991] *Public Administration*, 69(1), pp. 3-19.

6 Brewer B (2007) *Op. Cit.*

7 Randma-Liiv, T., and Connaughton, B., ‘Public Administration as a Field of Study: Divergence or Convergence in the Light of

‘Europeanization?’ [2005] *TRAMES: A Journal of the Humanities & Social Sciences*, 9(4), pp. 348-360.

8 Vachudová, M. A., *Europe Undivided: Democracy, Leverage and Integration After Communism* (Oxford University Press, Oxford 2005).

9 Dimitrov, A., and Toshkov, D., ‘The Dynamics of Domestic Coordination of EU Policy in the New Member States: Impossible to Lock In?’ [2007] *West European Politics*, 30:5, pp. 961-986.

10 Comba, M., and Caranta, R., ‘Administrative Appeals in the Italian Law: On the Brink of Extinction or Might They Be Saved (and Are They Worth Saving?)’ in Dragos, D. C., and Neamtu, B. (eds), *Alternative Dispute Resolution in European Administrative Law* (Springer-Verlag: Berlin, Heidelberg 2014), pp. 85-111.

11 Boustia, R., and Sagar, A., ‘Alternative Dispute Resolution in French Administrative Proceedings’ in Dragos, D. C., and Neamtu, B. (eds), *Op. Cit.* (2014), pp. 57-83, quote on p. 59.

12 Idczak, P., and Musiałkowska, I., ‘Assessment of the System of Project Selection under the Cohesion Policy. The Case of the Wielkopolska Region’ [2014] *Evaluacní teorie a praxe, Ročník 2(2)*, p. 20.

V. What Do We Know About Complaints Handling Under the ESI Funds?

As with domestic complaints-handling systems, there is little publicly available material on how Member States deal with complaints under their ESIF programmes. There are also no overviews of the *overall volume* of complaints received on the ESI Funds in the Member States and of the *subject* of such complaints. According to evidence gathered from national ombudsmen by the European Ombudsman, in 2007-13 complaints about Cohesion policy related mostly the stage of payments to final beneficiaries; beyond this, there have not been any studies to investigate this issue. DG Regio of the European Commission recently launched a tender for a study in the context of ESIF, which should provide interesting new evidence when the results become available (expected in summer 2018).¹³

We have carried out a review of a sample of 2007-13 ERDF programmes in eight countries, including examination of programme documents, latest Annual Implementation Reports, internal Programme Monitoring Committee documents, and programme websites. We found that information on the complaints handling arrangements was altogether absent in all cases except for the Polish 2007-13 OP of Śląskie (Poland), for which appeal procedures and rules were specified in the programme's implementation procedures Handbook. Even for the 2014-20 programming period, complaints arrangements are not always described in programming documents and websites, and the available information provided is often scant (with notable exceptions, e.g. Portugal).

Our review revealed that a range of different approaches are taken to complaints-handling in the 2014-20 programmes. These include: (i) approaches where the managing authority (MA) takes the lead in dealing with complaints; (ii) new dedicated bodies being set up for the task; and (iii) technical assistance being used to support the process.

1. ESIF Complaints Examined by the Managing Authorities

In Śląskie (Poland), administrative complaints are handled by the managing authority, based on an Annex to the regional OP's implementation regulation, which describes the appeal procedure and the rules for the lodging and processing of complaints. Com-

plainants have the right to lodge a protest within 14 days of receiving written notice of a decision, sending their case directly to the MA in written format. The regulation sets out clearly what information should be included in the complaint and how it should be assessed, and specifies the available appeal procedures.

Similarly, in Austria, the Managing Authority is responsible for dealing with complaints. Special procedures are foreseen for the complaints lodged to the MA about its own work, involving the appointment of independent experts providing recommendations to the MA.

2. ESIF Complaints Examined by Dedicated National Bodies

In Portugal, complaints are examined by a dedicated, newly established 'Beneficiary's Curator' – *Curador do Beneficiário*. This body, which is supported by a dedicated structure, has responsibility for receiving and appraising complaints from ESIF beneficiaries that are directly related to acts or omissions of the bodies responsible for the Funds. The *Curador* handles both the complaints that are directly sent to it, and the complaints received by the OPs: MAs forward these to the *Curador* and have an obligation to examine, and follow-up if applicable, the *Curador's* recommendations for remedial action. The complaints received and recommendations made are published on the *Curador's* website.¹⁴ During 2007-13, the Portuguese Ombudsman had raised awareness within the national administration on the importance of hearing beneficiaries in disputes over payments and the Ombudsman has subsequently expressed satisfaction with how its recommendations have been taken on board.

3. ESIF Complaints Examined by Technical Assistance

In some cases, the task of examining complaints is delegated to the companies who provide Technical

¹³ European Commission, Directorate-General Regional and Urban Policy, Call for tenders 'Study on the complaints-handling systems in Member States for dealing with complaints concerning the European Structural and Investment (ESI) Funds, Tender Specifications, CCI 2016CE16BAT102.

¹⁴ View website on <<http://curador.pt/index.php/lista-queixas>> (last accessed 20 November 2017).

Assistance services for the Operational Programme (e.g. in the national OP Governance in Italy).

VI. What Elements Should an ESIF Complaints-handling System Include?

The CPR does not define a complaint or the requirements of a complaints-handling system. Member State authorities themselves often do not define a 'complaint' and rarely give specific attention to the design of their systems for dispute resolution. In particular, as noted above, they may not make a clear distinction between 'complaints' and 'grievances': this distinction has important implications in relation to the enforceability, legitimacy and scope of the remedial action that may derive from an upheld complaint.¹⁵

In designing complaints systems, at least five dimensions should be taken into account: the format of the complaint; standing of the complainant; the adjudicating body; grounds for complaints; and the object of a complaint (see Figure 1).

- **Format of the complaint** – Complaints may be formulated and submitted in different formats: in writing by the complainant (through online forms, paper forms, emails, letters) or verbally via dedicated helplines or complaints helpdesks and then recorded.
- **Standing** – Complainants encompass different actors, including individuals or legal entities that may have a specific procedural issue in which they have a direct interest (e.g. an applicant with a rejected funding application) and those making complaints in the general interest (e.g. an NGO objecting to a project perceived to be damaging the environment). A key distinction is that between private undertakings and natural persons in receipt of EU Funds or in the process of receiving EU funds, and public authorities in receipt of EU Funds or in the process of receiving EU Funds.
- **Adjudicating body** – Complaints on public policies are generally sent to the administrations responsible for the contested decision, programme, scheme or project, or to dedicated bodies. The com-

plaints receiver may not necessarily be the actor who will examine and decide upon the complaint, however. For the ESI Funds, a number of different actors could be the addressees, as well as the targets, of complaints: the Managing Authority, Certifying Authority and Audit Authority of a programme; an intermediate body responsible for parts of programme; a selection board or its sub-committees; a national coordinating body; as well as the European Commission. Adjudicating bodies may include dedicated committees established by the Programme Monitoring Committee or Managing Authority, ad hoc created authorities, or already existing bodies charged with the task of examining complaints or programme management functions.

- **Grounds for complaint** – The grounds for a complaint may also vary, not least depending on the type support provided. Complaints about a major infrastructure project may be more likely to relate to different aspects of the project selection procedure (e.g. compliance with public procurement, planning laws, State aid) than complaints about a grant scheme offering support to firms. Different types of complaints procedures may have to be followed depending on the substance of the complaint. A complaint may relate to the legality or regularity of a measure, scheme or project – based, for example, on the purported violation of administrative law principles (e.g. fair and equal treatment, transparency), State aid regulations, public procurement legislation, environmental legislation, city planning rules or strategies, anti-discrimination laws etc. It may relate to an omission by a public authority which has had implications for the legality or regularity of a procedure (e.g. lack of required strategic environmental assessment for a major infrastructure such as an airport). It may relate to the quality of a decision taken by a public body, for example the merit of a decision based on strategic relevance or adherence to pre-defined selection criteria.
- **Object** – A complaint may relate to, for example, the project selection procedures followed, the outcomes of such procedures, the obligations attached to funding, the payments received by beneficiaries, or the audit and controls procedures enacted by the bodies responsible for these tasks.

¹⁵ We are grateful to Christopher Bovis for pointing out this issue to us.

Examples of complaints handling systems, examined through the lens of the constituent elements outlined

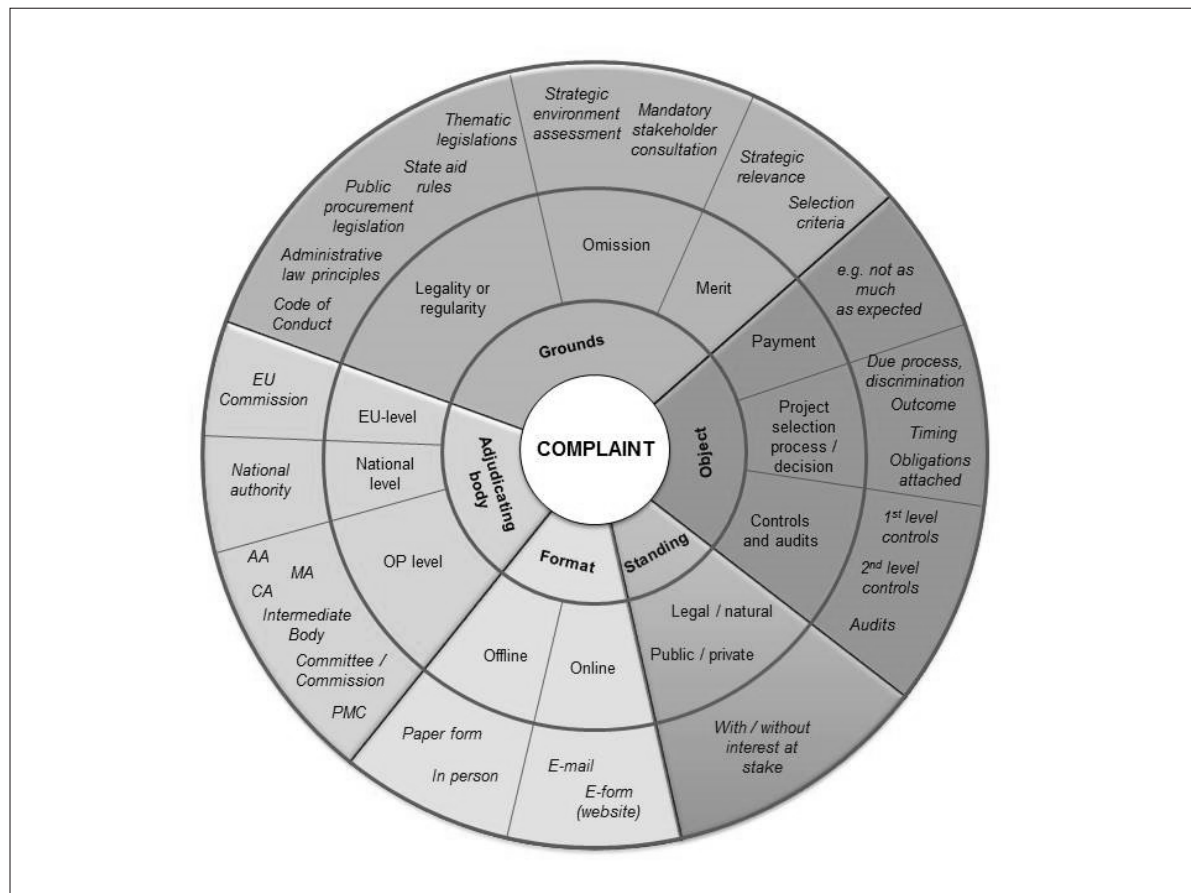


Figure 1: Constituent Elements of an ESI Funds Complaints-handling System.
Source: Authors' own compilation.

above, are provided in Tables 1 and 2. They relate to the PEACE II and IV programmes, and the INTERREG IVA and VA programmes, and to the complaints procedure developed by INTERACT for ETC programmes.

VII. Assessing the Effectiveness of a Complaints-handling System

As discussed above, the complaints handling systems of EU Member States is an under-researched area. While administrative law scholarship has researched alternative dispute resolution systems across the EU, i.e. administrative appeals, mediation and recourse to Ombudsmen, “there is no empirical research measuring the effectiveness of administrative appeals and other ADR tools.”¹⁶ There are neither common definitions of such systems, nor systematic ap-

praisals of their effectiveness. However, according to the literature, a public complaints-handling system must: provide confidence in its fair operation; provide assurance of privacy and freedom from fear of retaliation; be conspicuous and easily accessible; and be simple to operate.¹⁷

As the ESI Funds regulations do not provide a definition of what constitutes an effective complaints-handling system, this article proposes that four criteria (user-orientation, administrative capacity, management utility, and accountability) could provide a starting point for assessing system effectiveness (illustrated in Figure 2):

1. User-orientation could encompass:

¹⁶ Dragos, D. C., and Neamtu, B. (eds), *Alternative Dispute Resolution in European Administrative Law* (Springer-Verlag: Berlin, Heidelberg 2014), p. v.

¹⁷ Brewer, B., (2007) *Op. Cit.*, p. 552.

Table 1: Complaints System of the Special EU Programmes Body (SEUPB) for the Implementation of Cross-border PEACE II and IV and INTERREG IVA and VA Programmes (covering Northern Ireland, Border Regions of Ireland, and parts of Western Scotland).

Format	<p>Phone and email via a form in the body's website.</p> <p>Written complaints to be submitted via a signed standard form¹ which specifies:</p> <ul style="list-style-type: none"> • details of complainant • whether complaint relates to a service provided by the organisation (and which) or a project/organisation in receipt of funding • whether the complainant has already contacted the project/organisation concerned (and attachment of documentation i.e. complaint and response received, if applicable) • description of reasons for complaint • date of reported action and, if more than 12 months before, reasons for delay in submitting complaint • complaints details (background to the complaints, way in which the complainant has been affected by the incident, desired remedial action) • whether the complaint should be treated as confidential (and why) <p>Phone call encouraged as first step for problems relating to a service provided by the organisation; first contact with the concerned organisation for complaints related to funded projects.</p>
Adjudicating body	A dedicated complaints department based in Belfast.
Object	<p>Eligible complaints</p> <ul style="list-style-type: none"> • Complaints relating to the administrative services provided by the SEUPB. • Complaints relating to a project funded with monies from any of the European Programmes for which the SEUPB is responsible, i.e. the PEACE IV and INTERREG VA Programmes 2014-20 and PEACE III and INTERREG IVA Programmes 2007-2013. <p>Ineligible complaints</p> <ul style="list-style-type: none"> • Matters that have already been fully investigated through SEUPBs complaints procedure. • Complaints about funding applications (i.e. complaints from organisations who have been rejected for funding or who feel that they have not received sufficient funding): Complaints relating to project assessment and all funding decisions are dealt with through a separate 'Review Procedure'. • Project concerns falling outside of the remit of SEUPB - The SEUPB does not have the remit to consider all actions undertaken by an organisation in receipt of European funding. Complaints must relate directly to a project for which funding was provided from one of the European Programmes for which the SEUPB is responsible. • Complaints made more than 12 months after the complainant became aware of the problem.
Standing	Not specified.
Grounds	Not specified.

Source: The SEUPB Complaints Procedure, view online at <https://www.seupb.eu/sites/default/files/inline-files/Complaints_Procedure.pdf>(last accessed 4 December 2017).

¹ View online at <<https://seupb.eu/contact/complaints>> (last accessed 4 December 2017).

Table 2: Complaints Procedure for ETC Programmes – INTERACT tool (version November 2015).

Format	<p>In writing:</p> <ul style="list-style-type: none"> • mail • fax • e-mail
Object	<p>A decision during project assessment and selection</p> <p>A decision during project implementation</p> <ul style="list-style-type: none"> • disagreements on conditions during the contracting process • related to First Level Control, Second Level Control, and Audit

Adjudicating body	Responsible national authority (on first level control, second level control, or audit, addressed) Managing Authority and Complaint Panel (on project assessment and selection) <ul style="list-style-type: none"> • Addressed to the Managing Authority • Transferred to an Impartial Complaint Panel • Complaint panel, selected by the Monitoring/Steering Committee, and which includes a neutral member (someone who is neither part of the Monitoring/Steering Committee, nor the Managing Authority or Joint Secretariat: an external expert, person from another ETC programme, national authority).
Standing	Only the project's Lead Applicant (also in behalf of project partners)
Grounds	Regularity/legality <ul style="list-style-type: none"> • of project assessment: the outcomes of the technical and/or quality assessment of the project application do not correspond to the information provided by the Lead Applicant; • of procedures: project assessment and selection failed to comply with specific procedures laid down in the official documents, which materially affected or could have affected the decision.

Source: Interact, *Harmonised Implementation tools for ECT Programmes – Complaints procedure according to Art. 74 (3) CPR (rev 3 Nov 2015)* (version 3 November 2015).

- Formalisation – written procedures, which do not leave room for interpretation about what is and what is not covered by the procedure.
 - Clarity and accessibility – a clear description, accessible to the layperson of: (i) the body entitled to receive the complaint; (ii) types of complaints covered; (iii) steps of the procedure and related timetable; (iv) range of possible outcomes and remedial actions; and (vi) administrative escalation and judicial follow-up.
 - Comprehensiveness – coverage of all aspects relating to decision-making and implementation processes.
 - Fairness – fair treatment, where claimants are given the opportunity to be heard and responses comprise the reasons for the decision taken.
2. Administrative capacity¹⁸ could encompass:
 - Structures – an identified body in charge of dealing with complaints, endowed with an adequate organisational structure, capabilities and operational guidelines.
 - Systems and tools – IT systems for managing the process of receiving, processing, tracking, resolving and communicating complaints in a timely and efficient manner; use of protocols specifying standards, timescales and outcomes.
 - Human resources – staff trained in administering and resolving complaints according to standard procedures, and competent over range of areas required.
 3. Management utility – the capability of providing programme managers with timely and relevant knowledge for adapting the management of a programme in response to complaints and improving the complaints system itself – could include:
 - Targets – relating to the timetable by which complaints are dealt with, and to the volume of complaints handled and successfully resolved.
 - Analytical reports – systematic reporting on the performance of the system and the issues raised in the complaints, with comparisons between actual values with targets and historical figures.
 4. Accountability – the capability of delivering aggregate information for accountability to political decision-makers and the public – could encompass:
 - Transparency – description of responsibilities, procedures, and anonymised data on complaints and outcomes made publically available.
 - Reporting – to decision-makers, containing qualitative analysis of key themes, weaknesses and strengths, and recommendations for improvement.

¹⁸ Van Bork, G., *Developing administrative capacities* (training presentation delivered to Managing Authorities by EIPA-Ecorys-PwC, Summer 2014, Brussels), available online at <http://ec.europa.eu/regional_policy/sources/docgener/informat/expert_training/admin_capacity_en.pdf> (last accessed 20 November 2017).

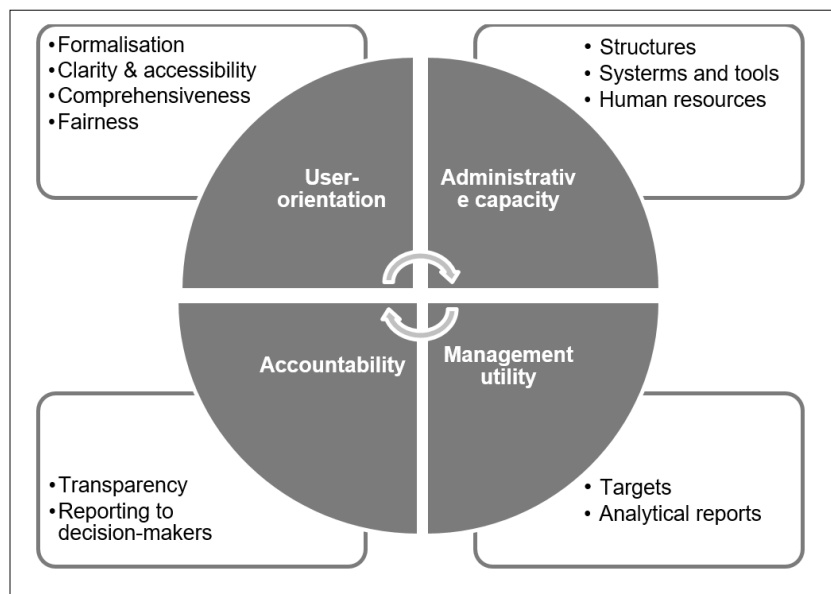


Figure 2: The Four Dimensions and Variables of an Effective Complaints System. Source: Authors' own compilation.

As already noted, within the ESI Funds context, a number of different actors may be tasked with examining complaints and deciding on them, e.g. Managing Authorities, Intermediate Bodies, Audit Authorities, *ad hoc* created or already existing dedicated bodies or committees etc. The responsibilities of receiving and examining complaints may be decoupled. Not least because of this, there needs to be a clear assignment of roles and responsibilities between all involved in a complaints handling structure.

As for any administrative function, the personnel working in such a structure must be adequate both in numbers and skills. Staff must be trained to operate based on internal codes of practice and principles of conduct, but they must also possess technical expertise on the variety of ESIF investment areas (e.g. ESIF regulations, public procurement and State aid legislation, environmental legislation, knowledge of specific policy fields funded by the ESI Funds such as innovation policy, etc.).

VIII. Conclusions

This review of the regulatory and theoretical aspects of ESIF complaints handling leads to a number of conclusions.

- *Formal arrangements for dealing with complaints within ESIF programmes prior to 2013 may not have existed* in some Member States, unless required by domestic legislation. Complaints logged in relation to an ESIF programme or operation, as well as their outcomes and speed of resolution, therefore, may not have been systematically monitored.
- *There is limited publicly available information on ESIF complaints-handling systems and arrangements, and their application.* This applies primarily to the 2007-13 period, but even for the 2014-2020 programming period, complaints arrangements are not always described in programming documents and websites, and the available information provided is often scant (with notable exceptions, e.g. Portugal). New information should be available with publication of the DG Regio study sometime in the summer of 2018.
- *The scope of eligible complaints and the institutionalisation of complaints arrangements vary across the Member States.* This is linked to domestic legal frameworks, existing levels of administrative capacity¹⁹ and the wider context in which programmes operate (e.g. beneficiaries' propensity to

19 As other aspects of ESIF delivery, see Piattoni, S., and Polverari, L., *Handbook on Cohesion policy in the EU* (2016): Elgar, E. (Chapters 15-19); Tosun, J., 'Absorption of Regional Funds: A Comparative Analysis' [2013] *Journal of Common Market Studies*, 52(2), pp. 371-387; Mendez, C., and Bachtler, J., 'Financial Compliance in the European Union: A Cross-National Assessment of Financial Correction Patterns and Causes in Cohesion Policy' [2017] *Journal of Common Market Studies*, DOI: 10.1111/jcms.12502.

complain, trust that complaints will be afforded fair treatment, generalised perception of the efficiency of public administration in dealing with complaints etc.).

- *The level of publicity associated with complaints is often low (again, with exceptions).* In the absence of rules about required publicity, and given the sensitive nature that complaints may present, public authorities are disincentivised to publicise practices that may damage their image or invite further complaints.

These conclusions raise a number of questions that are relevant for the discussions of the administration of the ESI Funds in the post-2020 programming period. In this context, there is widespread consensus on the need for simplification to reduce the administrative costs and burden of the Funds.²⁰ As with other aspects of programme management, there is a trade-off between allowing authorities in the Member States to deal with complaints according to their own national approaches or investing time and effort to ensure that these systems across the EU are all effective and that all deliver common minimum

standards. While more precision in the regulation regarding the definition of what constitutes an effective complaints system could be desirable, dealing with complaints is a competence of Member States. Potentially imposing an additional onus onto domestic authorities in this area, for example via ex ante conditionalities, may well result in increased management complexity for domestic authorities and could represent an example of the use of Cohesion policy as a lever for wider-ranging reforms that go beyond its remit, with potentially limited impact on the policy's overarching goals.

20 The need to address simplification and capacity were recently restated in the Seventh Cohesion Report: European Commission, *My Region, My Europe, Our Future. Seventh report on economic, social and territorial cohesion* (Luxembourg: Publications Office of the European Union 2017). See also the reports of the High Level Group on Simplification; the draft Omnibus draft regulation (14.9.2016 COM(2016) 605 final 2016/0282 (COD)0; Davies, S., 'Is Simplification Simply a Fiction?' (*IQ-Net Thematic Thematic Paper 37 (2)*), European Policies Research Centre, University of Strathclyde, Glasgow 2016), view online at <<https://strathprints.strath.ac.uk/58784/>> (last accessed 4 December 2017); and a number of European Parliament Resolutions (e.g. Resolution of 11 May 2016 on the acceleration of implementation of cohesion policy and resolution of 26 November 2015 on the simplification and performance orientation in 2014-2020 cohesion policy).