



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL  
REGIONAL AND URBAN POLICY  
**European Solidarity Fund**

## **EU Solidarity Fund (EUSF) – clarification on implementation and auditing processes**

**1 - Template for the structure of the implementation report**

**2 - Model for the financial table**

**3 - Question & Answers**

## **1 – Template for the structure of the implementation report**

- 1. *Introduction and short description of the event, impact of the disaster, emergency response (short recap).***
- 2. *Application procedure (short recap)***
- 3. *Implementation of the financial contribution***
  - a) Overview of bodies responsible for implementing and coordinating the operations*
  - b) Description of operations, by measure, by implementing body*
  - c) Description of selection process for individual operations*
  - d) Description of the financial flow from central level to individual operations*
  - e) Respect of relevant EU policies, in particular on public procurement and environmental protection*
  - f) Date of receipt of the financial contribution*
  - g) Amount of interest gained (if applicable)*
  - h) Duration of implementation period*
  - i) Use of exchange rate (if applicable)*
  - j) Latest valuation of damage incurred (ex-post valuation of damage, if relevant information has become known)*
- 4. *Financial control – Audit and control system (description)***
  - a) Verification and control of operations at the different levels*
- 5. *Preventive measures taken or proposed to limit future damage including a description of the state of implementation of relevant Union legislation on disaster risk prevention and management***
- 6. *Description of the experience gained from the natural disaster and the measures taken or proposed to ensure environmental protection and resilience in relation to climate change and natural disaster***
- 7. *Other relevant information on prevention and mitigation measures taken related to the nature of the natural disaster***

- 8. *Financial tables (see Annex 2 – model for the financial table)***
  - a) Overview table*
  - b) Complete list of operations classified by type of operation.*
- 9. *Statement justifying the expenditure, affirming that***
  - a) the operations detailed in the statement justifying the expenditure have not received a contribution from another EU or international source of financing, including insurance settlements;*
  - b) the expenditure is not covered by compensation for or reimbursement of damage provided by a third party;*
  - c) where appropriate, the procedures necessary for obtaining compensation or reimbursement from a third party for damage suffered have been initiated.*
- 10. *Opinion of the independent audit body (see Annex 3, point 12.4)***
- 11. *Any other relevant information (e.g. court cases against beneficiaries etc.) or findings (e.g. amount to be paid back to the European Commission)***

## 2 - Model for the financial table

### Annex 2.1 – Overview table

N°	Financial information required	Amount (in €)
1.	Expenditure incurred and paid, declared by the beneficiaries (to the implementing bodies/ coordinating body) as being eligible under the EUSF <sup>1</sup>	
2.	Irregular expenditure detected and corrected by the implementing bodies (if different from the beneficiaries) and/or by the coordination body, where applicable	
3.	Expenditure as being eligible under the EUSF (after the first level checks done by the implementing bodies/ coordinating body and corrections of irregular expenditure detected by these bodies, if applicable)	
4.	Irregular expenditure detected and corrected on the basis of the audit work of independent audit body <sup>2</sup> , where applicable	
5.	Irregular expenditure detected and corrected on the basis of audits/investigations carried out by other EU or national bodies (e.g. national Court of auditors, European Court of Auditors, OLAF, European Commission), where applicable	
6.	Expenditure declared to the Commission as legal and regular, after correcting all the irregularities above-mentioned <sup>3</sup>	
7.	EUSF financial contribution (based on the expenditure mentioned in point 6 above)	
8.	Interest gained (cf. Article 1 of the awarding decision, part of the contribution)	
9.	Amount to be recovered , if applicable (i.e. amount to be reimbursed to the Commission by the beneficiary State)	

<sup>1</sup> Excluding ineligible VAT, if applicable under Article 3(4) of the EUSF Regulation.

<sup>2</sup> This amount relates to irregularities detected by the independent audit body in the context of its audits of operations, with a view to calculate the best estimate of the error in the expenditure declared by the coordinating body as being legal and regular. The amounts considered irregular may include individual irregularities (i.e. one-off errors which are independent of other errors detected in the expenditure declared) and systemic irregularities (i.e. errors, repeated or not, resulting from the existence of serious deficiencies in the management and control systems applicable to the EUSF assistance). The irregular amount can be calculated through extrapolation of the error rate calculated by the audit authority or through a flat rate financial correction.

<sup>3</sup> The financial corrections may be applied by replacing the irregular expenditure with other legal and regular expenditure or through reduction of the EUSF contribution, where there is no overbooked expenditure (i.e. expenditure in excess of the EUSF contribution).

Annex 2.2 – Financial details on the operations financed by the EUSF

Title and reference number of the operation	Short description of operation <sup>4</sup>	Implementing body	Beneficiary <sup>5</sup>	Type of measure <sup>6</sup>	Date of last payment by beneficiary to contractors <sup>7</sup>	Amount financed by beneficiary State (EUR) (if applicable)	Amount financed by the Solidarity Fund (EUR)
<b>TOTAL</b>							

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<sup>4</sup> Further details to be provided in the implementation report.

<sup>5</sup> If different from implementing body.

<sup>6</sup> See Annex I of the awarding decision.

<sup>7</sup> If works/services/supplies are delivered by the contracting authority's own departments/staff, indicate here the date of the last payment made to these departments/staff.

## 3 - Question & Answers

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## 1. WHAT IS THE EXCHANGE RATE TO USE IN THE REPORTS SENT TO THE COMMISSION?

Article 9 of the EUSF Regulation states that all amounts of expenditure incurred in national currencies shall be converted into euros at the exchange rate published in the Official Journal of the European Union (C series)<sup>8</sup> for the day on which the Commission has adopted the awarding decision.

Where no exchange rate is published in the Official Journal for the day of the adoption of the awarding decision, conversion shall be made at the average of the monthly accounting rates established by the Commission, determined over that period.

The Commission has interpreted '*that period*' from the start of the disaster until adoption of the decision.

## 2. HOW TO VERIFY COMPLIANCE WITH PUBLIC PROCUREMENT RULES IN THE CONTEXT OF EUSF?

As established by Article 7 of the EUSF Regulation, "*operations financed by the Fund shall be compatible with the provisions of the Treaty and instruments adopted under it, with Union policies and measures, in particular in the fields of (...) public procurement (...)*". Hence, the national bodies responsible for the management and control of EUSF need to ensure compliance with public procurement rules, in particular the national law relating to the application of the relevant EU Directives.

Verifications in relation to public procurement should aim to ensure that Union public procurement rules and related national rules are complied with and that the principles of equal treatment, non-discrimination, transparency, free movement and competition have been respected throughout the entire process. Verifications should be carried out as soon as possible after the particular process has occurred as it is often difficult to take corrective action at a later date.

The "Guidance for practitioners on the avoidance of the most common errors in public procurement of projects funded by the European Structural and Investment Funds"<sup>9</sup>, published by DG Regional and Urban Policy should be taken into account by national bodies involved in EUSF assistance.

Attention is drawn for the fact that the Commission Decision of 19.12.2013 on the "*setting out and approval of the guidelines for determining financial corrections to be made by the Commission to expenditure financed by the Union under shared management, for non-compliance with the rules on public procurement*" is applicable to EUSF<sup>10</sup>. Where irregularities<sup>11</sup> are detected, the national authorities involved in the

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<sup>8</sup> Link to the [OJEU](#).

<sup>9</sup> Link to Inforegio: [guidance\\_public\\_proc\\_en.pdf](#)

<sup>10</sup> Link to Inforegio: [cocof\\_13\\_9527\\_en.pdf](#)

The guidelines are being updated, in particular to cover the relevant changes introduced by Directives 2014/23/EU, 2014/24/EU and 2014/25/EU. The adoption of the updated guidelines is planned for the 1<sup>st</sup> quarter of 2018.

<sup>11</sup> The term 'irregularity' means any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic operator involved in the implementation of the EUSF, which has, or would

implementation of the EUSF should apply financial corrections in accordance with these guidelines.

In order to ensure an adequate control the national bodies involved in the control and audit of the EUSF the bodies are invited to apply the checklist for the verification of public procurement, shared by the Commission with audit authorities responsible for programmes co-financed by European Structural and Investment Funds<sup>12</sup>.

The public procurement Directives (and their transposition to the national legislation) are to be interpreted in a strict way, even in the particular context of the EUSF which provides financial assistance to contribute to a rapid return to normal living conditions in the disaster-stricken regions.

However, in some cases, the contracting authorities awarding contracts for works, services and supplies financed by the EUSF tend to have a less strict approach. In particular, they tend to justify direct awards for those contracts under derogations to the general rules, established by national legislation adopted in the context of the natural disaster. These derogations are usually based in the following provision established in public procurement Directives (and reflected in the national legislation transposing these Directives)<sup>13</sup>. Article 31(1)(c) of the Directive 2004/18/EC refers:

*"Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice (...) for public works contracts, public supply contracts and public service contracts: insofar as is strictly necessary when, for reasons of **extreme urgency** brought about by events unforeseeable by the contracting authorities in question, the time limit for the open, restricted or negotiated procedures with publication of a contract notice as referred to in Article 30 cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority."*

In Case C-107/92, the first event was a report from the Geological Department of the Ministry of the Environment recommending "urgent action" presented on 10 June 1988 which then caused the contracting authority to start a procedure leading to a contract concerning the construction of an avalanche barrier in the Alpes, awarded on 18 June 1988. However, the works started only on 21 September 1988, more than three months after the report had been presented. The Court concluded that Italy has not demonstrated the existence of extreme urgency since, during this three-month period, the Italian Government could have set in motion the 22-day accelerated procedure provided for by the Directive 71/305/EEC.

In this context, as regards the contracts subject to the Directive 2004/18/EC, the derogation foreseen in Article 31(1)(c) of this Directive can only be applied when there is evidence that the contracting authority, due to an unforeseeable event, could not have complied with the time limit for the open, restricted or negotiated procedures with publication of a tender notice.

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have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union. In absence of a definition in the EUSF Regulation, this concept of irregularity is drawn from Article 2(36) of the Regulation (EU) No 1303/2013, applicable to ESI Funds.

<sup>12</sup> Available upon request to [Regio-Audit-Coordination@ec.europa.eu](mailto:Regio-Audit-Coordination@ec.europa.eu).

<sup>13</sup> In other cases, the Member States invokes the Article 14 of the Directive 2004/18/CE to allow direct awards. This provision is not applicable to the natural disasters to which EUSF provides financial assistance.



The above-mentioned Directive's derogation means that all the contracts for which the works have not started immediately after the unforeseeable event and were not subject to an open, negotiated or restricted procedure with publication in the OJEU would in principle be in breach of the Directive's provisions. The same would be applicable to services or supplies contracts. In some cases, it would be justifiable that works have not started immediately after the unforeseeable event; this would be the case where floods occurred continuously after the event, thus making not possible to start the works.

A similar approach is applicable to contracts not subject to the public procurement Directives, although in this case it is necessary to verify the compliance with the relevant national legislation.

### **3. IS VALUE ADDED TAX ELIGIBLE UNDER THE EUSF?**

VAT is not eligible unless it is non-recoverable by the beneficiary/project owner under national VAT legislation, i.e. if the beneficiary effectively has to pay VAT. For further details on this issue, the Commission is preparing a specific guidance, to be published in 2017.

### **4. IS EUSF ASSISTANCE CONSIDERED STATE AID?**

Article 107(2b) of the Treaty on the Functioning of the European Union (TFEU) refers that "aid to make good the damage caused by natural disasters or exceptional occurrences shall be compatible with internal market". Article 50 of the General Block Exemption Regulation (Regulation (EU) No 651/2014, known as GBER) intends to clarify when the said TFEU provision applies. The said GBER provision includes an exemption on "aid schemes to make good the damage caused by certain natural disasters"; this provision sets out the conditions under which this aid can be exempted from notification. Where the EUSF assistance complies with these conditions, the notification to the Commission is not required.

Where the EUSF assistance does not comply with Article 50 of the GBER, the next step is to verify whether the entities receiving aid are qualified as "undertakings" in the sense of Article 107(2b) TFEU, i.e. whether they are entities engaged in an economic activity, regardless of their legal status and the way in which they are financed. For further information on the notion of undertaking, please refer to section 2 of the "Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union"<sup>14</sup>.

If the entity receiving aid from EUSF is considered an undertaking, the next step in the analysis is to verify whether the following elements are present: (i) there is an advantage (i.e. an economic benefit that an undertaking would not have obtained under normal market conditions); (ii) the aid is selective (e.g. favours certain undertakings); (iii) there is a potential distortion of competition and an effect on trade between Member States.

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<sup>14</sup> Official Journal of the European Union C 262/1 of 19.7.2016: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XC0719(05)&from=EN)

Where the above conditions are met and the EUSF assistance does not comply with Article 50 of the GBER, then this means that the Member State needs to notify the State aid to the Commission (cf. Article 108(3) TFEU).

## **5. HOW TO ENSURE COMPLIANCE WITH ENVIRONMENTAL RULES IN THE CONTEXT OF THE EUSF?**

As established by Article 7 of the EUSF Regulation, *"operations financed by the Fund shall be compatible with the provisions of the Treaty and instruments adopted under it, with Union policies and measures, in particular in the fields of (...) environmental protection, natural disaster risk prevention and management, climate change adaptation including, where appropriate, eco-system based approaches (...)"*.

Hence, the national bodies responsible for the management and control of the EUSF need to ensure compliance with environmental rules, in particular the national law relating to the application of the relevant EU Directives. Those bodies should be able to demonstrate that the compliance with environmental rules was properly assessed before any intervention that is financed by the EUSF.

The environmental EU Directives cover several fields and it is not possible to present in this document a comprehensive overview of all of them. However, given the recurrent EUSF assistance to natural disasters caused by floods, our services draw the attention of the beneficiary States to the Directive 2007/60/EC<sup>15</sup> on the assessment and management of flood risks, entered into force on 26 November 2007. Flood risk management plans shall take into account the relevant environmental objectives of Article 4 of Directive 2000/60/EC, commonly known as the 'Water Framework Directive'.

The need to ensure an adequate disaster risk prevention and management is reflected in the EUSF Regulation, namely in its Articles 4(2), 5(2), and Article 8(3). The latter establishes that the implementation report shall detail *"(a) the preventive measures, taken or proposed by the beneficiary State to limit future damage and to avoid, to the extent possible, a recurrence of similar natural disasters, including the use of Union Structural and Investment Funds for this purpose; (b) the state of implementation of relevant Union legislation on disaster risk prevention and management; (c) the experience gained from the natural disaster and the measures taken or proposed to ensure environmental protection and resilience in relation to climate change and natural disasters; and (d) any other relevant information on prevention and mitigation measures taken related to the nature of the natural disaster"*.

## **6. ARE STAFF COSTS ELIGIBLE UNDER THE EUSF?**

Staff costs of the emergency services and of public administrations during the emergency and recovery phase are eligible only if they represent an effective cost clearly attributable to the operations financed by the EUSF.

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<sup>15</sup> Link to [Directive 2007/60/EC on the assessment and management of flood risks in all available languages \(OJ L288, 6.11.2007, p.27\)](http://ec.europa.eu/environment/water/flood_risk/index.htm). Further information is available here: [http://ec.europa.eu/environment/water/flood\\_risk/index.htm](http://ec.europa.eu/environment/water/flood_risk/index.htm)

As with other cost items, this type of cost must be appropriately documented. Documentation supporting this expenditure includes payment slips or other relevant accounting documents of equivalent probative value (stating the nature of the work/service provided, the hours of work, salary paid for this work, with a clear distinction from the normal salary) and proof of the bank transfers made to the relevant staff.

The use of overheads/indirect costs is to be avoided under the EUSF since the direct link to the natural disaster is usually difficult to prove. If the beneficiary State considers that this link can be confirmed, then our services advise the use of an allocation key to calculate these costs. In this case, the national body coordinating the implementation of the EUSF assistance should: (i) ensure an harmonized approach across all the implementing bodies and beneficiaries concerned by this assistance; (ii) define criteria to establish the allocation key; (iii) ensure a clear audit trail of the data used in the calculations of the allocation key; this data should be the most recent data available before the natural disaster at stake.

Normal salaries paid independently of the operations financed by the EUSF are not eligible.

Costs related to drawing up the Solidarity Fund application are not eligible.

## **7. IS TECHNICAL ASSISTANCE ELIGIBLE UNDER THE EUSF?**

As established by Article 3(5) of the EUSF Regulation, *"technical assistance for management, monitoring, information and communication, complaint resolution, and control and auditing, shall not be eligible for a financial contribution from the Fund"*. The same provision states that *"costs relating to the preparation and implementation of the operations referred to in paragraph 2, including costs relating to essential technical expertise, shall be eligible as part of project costs."*

This means that technical assistance is eligible only insofar it refers to the technical and/or administrative preparation of individual operations and can therefore be considered part of the project cost. Personnel costs of public authorities involved in project preparation are not eligible unless they represent truly additional costs induced by the disaster (such as specific overtime).

## **8. WHAT IS EX-POST VALUATION OF DAMAGE?**

Beneficiary States are requested to include with their implementation report any information that may have become available (since the date of application for a EUSF contribution) about the latest estimate of the total direct damage caused by the disaster. While the beneficiary States do not have to carry out a specific ex-post evaluation of damage, for the purpose of reporting to the Commission, any new data that has become known after the submission of the EUSF application should be disclosed in the implementation report.

A significantly lower valuation of the damage (meaning over 10% less than the initial estimate presented in the application) may lead to a proportionate reduction of the EUSF contribution.

## 9. IS OVERBOOKING ALLOWED?

While the Commission will not pay more than 100% of the EUSF contribution established in the relevant Commission implementing Decision, beneficiary States are encouraged to report an amount of eligible expenditure exceeding the amount of the EUSF contribution received.

The overbooking allows the beneficiary State to replace expenditure that is found to be ineligible following a Commission audit (or other audit carried out after the expenditure is declared to the Commission, together with the implementation report) by other eligible expenditure under the same the EUSF assistance.

## 10. HOW TO APPLY FINANCIAL CORRECTIONS?

As established by Article 5(7) of the EUSF Regulation: *"The beneficiary State shall make the financial corrections required where an irregularity is ascertained. The corrections made by the beneficiary State shall consist of cancelling all or part of the financial contribution from the Fund. The beneficiary State shall recover any amount lost as a result of an irregularity detected."*

In this regard, the approach set out in the guidelines on the principles, criteria and indicative scales to be applied in respect of financial corrections made by the Commission<sup>16</sup> should be taken into account by the beneficiary States when applying financial corrections, with the necessary adaptations to the EUSF framework.

## 11. WHAT ARE THE RULES ON RETENTION OF DOCUMENTS?

According to Article 5(9) of the EUSF Regulation, *"the beneficiary State shall ensure that all supporting documents regarding expenditure incurred are kept available for the Commission and the Court of Auditors for a period of three years following the closure of the assistance from the Fund"*.

The period referred above should be interrupted either in the case of legal proceedings or by a duly justified request of the Commission. The NCB should inform beneficiaries of the start date of the period, based on the information provided by the Commission on the closure of the EUSF assistance.

The documents should be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.

The procedure for certification of conformity of documents held on commonly accepted data carriers with the original document shall be laid down by the national authorities and shall ensure that the versions held comply with national legal requirements and can be relied on for audit purposes.

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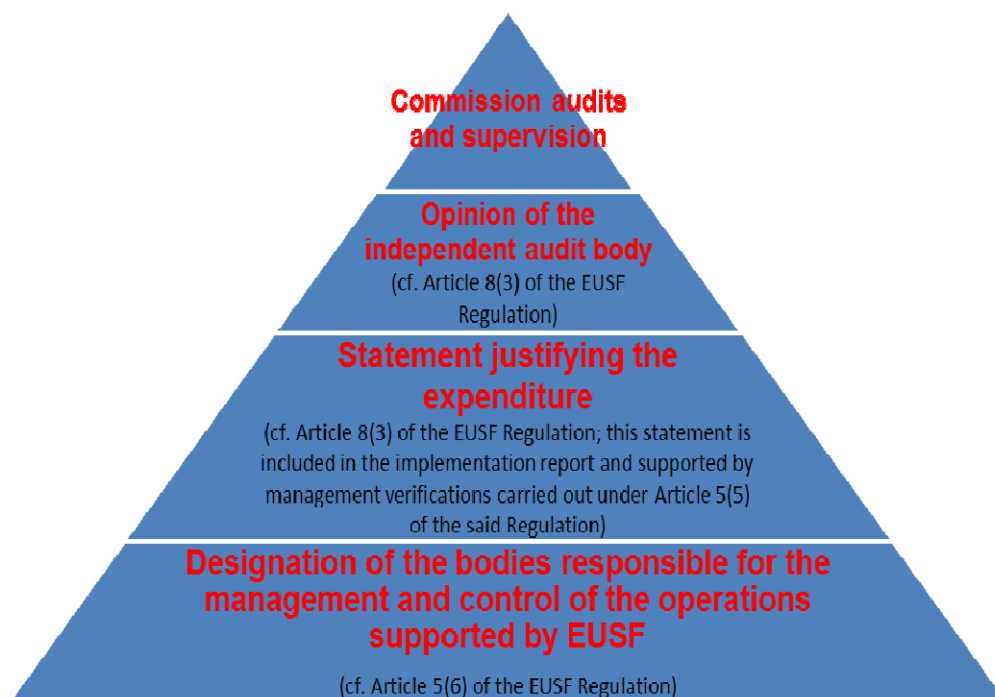
<sup>16</sup> Link to [guidelines\\_financial\\_corrections\\_2011.pdf](#)

Where documents exist in electronic form only, the computer systems used shall meet accepted security standards that ensure that the documents held comply with national legal requirements and can be relied on for audit purposes.

The document with Questions & Answers on e-cohesion<sup>17</sup> may be taken into account by the beneficiary State for the purposes of the EUSF, if considered relevant.

## 12. WHAT IS THE SOLIDARITY FUND ASSURANCE MODEL?

The EUSF assurance model is illustrated below.



### 12.1. What are the responsibilities of beneficiary States?

As stipulated in Article 5(5) of the EUSF Regulation, "*beneficiary States shall take responsibility for the management of operations supported by the Fund and the financial control of the operations*". This provision refers that the measures that the beneficiary State shall take in this regard include:

- verifying that management and control arrangements have been set up and are being implemented in such a way as to ensure that Union funds are being used efficiently and correctly, in accordance with the principles of sound financial managements,
- verifying that the financed actions have been properly carried out,
- ensuring that expenditure funded is based on verifiable supporting documents, and is correct and regular;

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<sup>17</sup> Link to [qa\\_ecohesion\\_en.pdf](#)

- preventing, detecting and correcting irregularities and recovering amounts unduly paid together with interest on late payments where appropriate. The beneficiary State shall notify any such irregularities to the Commission, and keep the Commission informed of the progress of administrative and legal proceedings.

The co-ordination and implementation of the financial contribution from the Fund shall be entrusted to bodies listed in Annex II to the Commission implementing decision. These bodies are responsible for setting up and proper functioning of the management and control system for implementation of the EUSF financial contribution, which gives the necessary guarantees concerning legality and regularity of the underlying transactions in conformity with the applicable law.

## **12.2. When and how should the designation of bodies (responsible for the management and control of operation supported by EUSF) occur?**

The designation of bodies responsible for the management and control of operation supported by EUSF should be done by the beneficiary State before the Commission adopts its Decision on the implementation of the EUSF assistance. This Decision should indicate the date and form of the designation<sup>18</sup>.

Article 5(6) of the EUSF Regulation establishes that "*Member States may designate the bodies already designated under Regulation (EU) No 1303/2013 (...)*". This possibility aims to achieve efficiency gains, since the Member State does not need to create new management and control structures specific for EUSF, since they can use the ones that exist already for the management and control of ESI Funds, taking advantage of their expertise.

Where the beneficiary State chooses to designate other bodies than the ones already designated for ESI Funds, it "shall take into account criteria on internal environment, control activities, information and communication, and monitoring", as established in the said provision. As a proxy, the beneficiary State may use the criteria specified in Annex XIII of the Regulation (EU) No 1303/2013, with the necessary adaptations to the EUSF framework. Upon request from the Commission, the beneficiary State should provide evidence that it has assessed these criteria and the conclusions drawn from such analysis, namely that the set-up of the management and control system fulfils the relevant criteria.

Similarly to the management and control system that is in place in Member States under ESI Funds, the national body responsible for the coordination of EUSF should play the role of "managing authority", while the independent audit body corresponds in essence to the role of "audit authority".

## **12.3. What are the responsibilities of the national coordination body?**

The national coordination body (NCB) should define in the first instance the procedures and processes on the basis of which it will ensure:

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<sup>18</sup> The legal form of the designation may correspond to a legislative act adopted at national level (e.g. law, decree, ministerial decision) or to any other form that the beneficiary State considers appropriate. In any case, the document by which the beneficiary State designates the relevant bodies should be final and adopted by the relevant national authorities before the date of Commission decision on the implementation of the EUSF assistance.

- (i) a transparent and non-discriminatory selection of operations to be financed by EUSF (in accordance with Article 5(3) of the EUSF Regulation) and
- (ii) an effective management verifications, in particular the ones required by Article 5(5) of the said Regulation.

Management verifications are the normal day-to-day controls made by management within an organisation to ensure that the processes for which it is responsible are being properly carried out. In the context of EUSF, these management verifications should cover the verification of compliance with EUSF eligibility rules, including the rules on public procurement, environment and State aid, where applicable.

Guidance on management verifications is available for ESIF managing authorities<sup>19</sup> and can be applied, with the necessary adjustments, to the EUSF context. The national coordination body may rely on the management checks performed by regional or local bodies responsible to implement the operations financed by EUSF, provided that the NCB ensures an adequate supervision of those checks. These checks should follow a common methodology, defined by the NCB.

The NCB is also responsible to draw-up the implementation report, which includes the "statement justifying the expenditure" (proxy to the management declaration applicable to the managing authority under ESI Funds) and the summary of the controls and audits carried out by the NAB (or national bodies to which the NAB delegates some functions) and the IAB. This summary is similar to the annual summary required under ESI Funds and, as regards the IAB audits, can include just a cross-reference to the audit report supporting the opinion of the independent audit body. The format of this summary can be similar to the template recommended under ESI Funds<sup>20</sup>.

It may be that beneficiaries have a reliable internal control and perform their own checks on the expenditure they consider legal and regular under EUSF before transmitting their expenditure claims to the NCB. It is important to note that the checks carried out by the beneficiaries cannot be considered to be equivalent of the verifications falling under Article 5 of EUSF Regulation, which fall, in the first instance, under the responsibility of the NCB. However, the NCB may use the beneficiary's checks as a factor to consider when define the extent of management verifications that the NCB should perform. The NCB may also delegate these management verifications to other national or regional bodies, but the NCB remains responsible for the quality of those verifications; for this purpose, it should re-perform a sample of the verifications done by other bodies, to ensure a consistent quality.

Verifications carried out by the NCB (or the bodies on which this body relies upon) aim to prevent declaration of irregular expenditure to the Commission. Similarly to the practice followed under ESI Funds, verifications of operations under the said Article 5 should comprise two key elements:

- Administrative verifications (i.e. desk-based verifications) in relation to all operations;

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<sup>19</sup> Link to [guidance\\_management\\_verifications\\_en.pdf](#).

<sup>20</sup> Link to [guidance\\_management\\_declaration\\_annual\\_summary\\_en.pdf](#)

- On-the-spot verifications carried out on a sample basis.

It is expected that all operations shall be subject to Article 5 administrative verifications either by the body responsible for coordinating the implementation or by bodies responsible for the implementation. However, verification of each individual expenditure item against source documentation within each operation and the related proof of delivery, although desirable, may not be practical. Therefore, selection of the expenditure items to be verified within each operation may be done on a sample of transactions. It is recommended that this sample of transactions is selected taking account of risk factors (value of items, type of beneficiary, past experience) and complemented by a random sample to ensure that all items have probability to be selected.

Although no operation shall be excluded from the possibility of being subject to an on-the-spot verification, in practice administrative verifications may provide a high level of assurance. The administrative verifications can then be completed by on-the-spot visits to a sample of the operations to provide confirmation on the assurance. The intensity, frequency and coverage of on-the-spot verifications would depend on the complexity of the operation, the amount of public support to an operation, the level of risk identified, the extent of detailed checks during administrative verifications. The internal control procedures of the beneficiaries could be also taken into account in this respect.

The extent of the administrative and on-the-spot verifications should be sufficient to guarantee that the expenditure certified to the Commission is legal and regular. All irregular expenditure detected during the verifications should be excluded from the expenditure declared to the Commission.

#### **12.4. What are the responsibilities of the independent audit body?**

In line with Article 8(3) of the EUSF Regulation, the implementation report shall be accompanied by an opinion of an independent audit body (IAB) establishing that the statement justifying the expenditure (i.e. the management declaration signed by the NCB) gives a true and fair view and that the expenditure financed by EUSF is legal and regular.

The IAB's opinion should be supported by an audit report, which should include the following elements (although not necessarily in this order):

- Title;
- Identification of the IAB (name, title, service and further information necessary to show the functional independence from the national coordinating body (NCB) and other bodies responsible for the implementation of the operations financed by EUSF);
- Identification of the EUSF assistance (includes the reference to the CCI number, title of the EUSF assistance and the Commission implementing decision awarding a financial contribution from the EUSF, the NCB and other bodies responsible for the implementation of the EUSF assistance);
- Reference to the auditing standards applied;
- Executive summary (as appropriate);
- Description of the scope (extent and limits of the audit);



- Audit criteria (includes reference to the regulatory framework, such the EUSF Regulation and other relevant EU and national legislation);
- Explanation and reasoning for the methods used;
- Description of the audit work carried out (e.g. system audit, sample of operations, dates of audits, review of audit work carried out by other audit bodies (if applicable), amount of expenditure checked in the context of the audits of operations and projected error rate in relation to the expenditure declared for EUSF assistance<sup>21</sup>);
- Findings (e.g. systemic weaknesses with regard to effectiveness of management and control systems, lack of audit trail, lack of supporting documents, legal proceedings, other types of irregularities/weaknesses);
- Replies from the audited entities (as appropriate);
- Recommendations (as appropriate) and their state of implementation as at the date of issuing the opinion. The IAB should provide confirmation that all expenditure related to errors/irregularities has been excluded from the expenditure statement submitted to the Commission;
- Other information (as appropriate). This section should include the following information, if relevant: clarifications in regard to limitations on the audit scope and qualifications expressed in the audit opinion; in cases of problems which have not been satisfactorily treated, the amount of expenditure affected should be indicated; any other information not falling under other sections of the audit report that the independent audit body would like to report, in particular if impacting the audit opinion issued. Overall level of assurance;
- Overall assurance: Indication of the overall level of assurance on the proper functioning of the management and control system and explanation of how such level was obtained from the combination of the results of system audits and audits of operations. Where relevant, the IAB should take also account of the results of other national or Union audit work carried out in relation to the EUSF assistance at stake. The IAB should reflect in this section the assessment of any mitigating actions implemented by the beneficiary State, such as financial corrections and assessment of the need for any additional corrective measures necessary.

It is recommended that the IAB is the audit authority designated for ESI Funds, or another public or private law body with the necessary audit capacity, which is independent of the NCB and other relevant bodies. The IAB shall carry out its work in accordance with internationally accepted audit standards, as established by Article 8(3) of the EUSF Regulation.

The audit standards require that the IAB complies with ethical requirements, plans and performs the audit work in order to obtain reasonable assurance<sup>22</sup> for the purpose of the audit opinion. In this respect, it is recommended that the IAB takes account of the ISSAI

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<sup>21</sup> The projection of the error rate should follow the methods explained in the [guidance sampling method en.pdf](#).

<sup>22</sup> Limited assurance is not an acceptable outcome of the IAB's work.

4000 (compliance audit standard from INTOSAI)<sup>23</sup>, where applicable. Other auditing standards may also be taken into account, where necessary. The audit report should disclose the auditing standards applied by the IAB. The IAB should apply the concept of "direct reporting engagement", instead of the concept of "attestation engagement", as defined in the quoted ISSAI 4000.

The audit procedures carried out by the IAB aim at confirmation that the management and control systems put in place function properly and that the EUSF expenditure declared to the Commission is legal and regular. The sample checks on operations carried out by the IAB should take place after completion of administrative and on-the-spot verifications carried out by the NCB and/or relevant bodies.

The extent and coverage of audit procedures performed by the IAB depend on the auditor's professional judgement, including assessing the risk of material non-compliance, whether due to fraud or error. In order to obtain sufficient appropriate evidence to support the opinion the performed audit procedures would in particular include evaluation of the risk of material misstatement in the expenditure declared to the Commission of the basis of audit of a sample of operations. These sample checks should be carried out after completion of administrative and on-the-spot verifications carried out by the NCB or other bodies under its supervision. Section 13 below contains further clarifications on the sampling procedures to be applied by the IAB.

This means that, once the NCB concludes its management verifications, it should then transmit to the IAB the details of the expenditure<sup>24</sup>, so this body can draw its sample for the purpose of the audits of operations to be performed by the IAB. On the basis of the results drawn from these audits and its own assessment of the management and control system implemented for the ESUF assistance, the IAB should be able to draw an audit opinion, supported by an audit report.

Where the IAB has relied (fully or partially) on other audit bodies under its supervision (in regard to system audits and/or audit of operations), the audit report should clarify how the IAB has ensured the quality review of the work performed by the audit bodies. The Commission's guidance on reliance on the work of other-auditors<sup>25</sup> can be used by the IAB in this regard.

In view of the fact that the concept of independent audit body is not always fully understood by beneficiary States, this is explained in more detail in the following paragraphs.

Independence is the freedom from conditions that threaten the ability of the IAB to carry out its responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out its responsibilities, the IAB must have direct and unrestricted access to senior management at all levels, including of the national coordination body. The IAB should ensure that

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<sup>23</sup> Link to ISSAI 4000: [http://www.issai.org/en\\_us/site-issai/issai-framework/4-auditing-guidelines.htm](http://www.issai.org/en_us/site-issai/issai-framework/4-auditing-guidelines.htm).

<sup>24</sup> With a breakdown by beneficiary, description of the operation, location, amount claimed by beneficiary, amount considered legal and regular by NCB, among other elements that may be relevant depending on the national legal framework.

<sup>25</sup> Link to [guidance on reliance on the work of other auditors](#).

its work is performed in an independent<sup>26</sup> and objective manner, free of conflict of interests with the audited entity, including the NCB and other national, regional or local bodies concerned.

Functional independence implies a sufficient degree of independence to ensure that there is no risk that links between different national, regional or local authorities create doubts as to the impartiality of decisions taken by the IAB. To ensure that sufficient degree of independence, the Beneficiary State should define a framework establishing that the IAB's staff cannot be involved with functions of the NAB or other bodies involved in the implementation of the EUSF assistance, the IAB should have autonomy of decision on recruitment of staff, clear job descriptions and clear written arrangements between authorities<sup>27</sup>. It is essential that the IAB can express disagreements with the other bodies concerned by the EUSF assistance and communicate in full independence its audit results to the stakeholders, in particular the Commission.

The same approach applies to the audit bodies carrying out audits under the remit of the IAB. In case those audit bodies are internal audit units, special considerations should be taken into account: the IAB should be aware of the organisational set-up and reporting lines within the organisation in question, in order to assess the position of the internal audit unit and the risk of impaired independence.

## **12.5. What are the responsibilities of the EUSF beneficiaries?**

Under EUSF, the term 'beneficiary' means a public or private body responsible for initiating or both initiating and implementing operations financed by EUSF. For historical reasons, the term "implementing body" is often used to mean "beneficiary" of EUSF assistance. Under EUSF, the implementing bodies or beneficiaries are usually departments within a ministry, national water companies, regional or local bodies.

Beneficiaries of operations funded by EUSF are responsible for ensuring that the expenditure to be financed by EUSF is legal and regular and complies with all applicable Union and national law. Usually, the EUSF beneficiaries have already been paid by the national budget before the EUSF assistance is decided by the Commission. This implies that the NCB, together with other national or regional bodies concerned, verify whether the expenditure paid by beneficiaries is legal and regular under EUSF.

The beneficiaries shall pay the relevant costs (e.g. to the contractors carrying out the works) within the 18 months deadline (set out in Article 8(1) of the EUSF Regulation) and keep evidence of such payments.<sup>28</sup>

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<sup>26</sup> Further advice on the concept of independence can be found in the Commission's recommendation on statutory auditors' independence of 16 May 2002 (OJ L191/22 of 19.07.2002) and in Chapter 3 of the INTOSAI Code of Ethics.

<sup>27</sup> These arrangements can be reflected for example in a governmental decision mentioning the authorities involved in the implementation of the ESUF assistance, authorities that will perform the tasks imposed by the EUSF regulation, or written protocols between authorities, working procedures, etc.

<sup>28</sup> In addition, the beneficiary State needs to ensure that the EUSF paid by the Commission is: (i) transferred directly to the beneficiaries to cover the relevant costs; or (ii) transferred to the national

### 13. WHICH SAMPLING PROCEDURES SHOULD BE APPLIED BY THE IAB FOR THE AUDIT OF OPERATIONS?

To gather the sufficient audit evidence on functioning of the management and control systems, it is expected that the audit procedures of the IAB include a random sample of operations. The sampling methodology (sampling method, sampling unit and the parameters for calculating the sample size) is determined by the IAB, based on professional judgement and taking into account the characteristics of the population (i.e. the expenditure declared as legal and regular by the NCB).

The IAB could decide to use one of the following sampling approaches:

- Statistical sampling methodology which allows for calculation of the projected error rate in the population as well as of the sampling precision which gives control over the audit risk,
- Random non-statistical sampling methodology, which allows for calculation of the projected error rate in the population.

Typically, the sampling unit shall be an operation<sup>29</sup>. However, the IAB could decide to use other sampling units.

Whereas the sample size in statistical sampling methods depends on the sampling parameters of the population (maintaining the required minimum of 30 sampling units), in non-statistical sampling methods the coverage of expenditure and number of operations should be decided by the IAB based on professional judgement and taking into account the risk of material misstatements in the population.

The size of the sample should be sufficient to enable the IAB to draw up a valid audit opinion. The non-statistical sample method should cover a minimum of 10% of operations and 5% of the expenditure for which expenditure has been declared by the NCB.

The following factors could be taken into account to determine the desired sample coverage:

- Internal control procedures of the beneficiaries, where this is justified. For example, where the beneficiaries are public bodies and checks on expenditure have been carried out by separate parts of these bodies as part of their own control procedures with appropriate segregation of functions, the sample coverage could be decreased if the control procedures of beneficiaries are considered reliable.
- The extent and quality of verifications carried out by the bodies responsible for the implementation of the financial contribution and by the body responsible for coordinating the implementation.

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accounting system in order to cover costs (eligible under EUSF) initially covered by the national budget. The NCB should keep the audit trail relating to these transfers.

<sup>29</sup> Similarly to ESI Funds, an 'operation' means a project, contract, action or group of projects selected by the NCB, or under its responsibility, that is considered eligible for the specific EUSF assistance.

- Particular risks detected during these verifications as well as other risks known to the independent audit body based on the any other sources of information.
- Complexity and nature of operations, types of beneficiaries etc.

In order to ensure that the results of the sample can be used to project the errors to the whole population, the IAB should select the sample at random, both in statistical and non-statistical sampling methods.

The IAB could consider stratification of population by dividing it into sub-populations, each one being a group of sampling units with similar characteristics, in particular in terms of risk/expected error rate. Stratification is a very efficient tool to improve the quality of the projected error. It also ensures representation of operations from all sub-populations in the sample.

Typical examples of stratification include:

- stratification by the level of expenditure (usually creation of a high-value stratum where all operations are subject to audit and a random selection of sampling units from all the remaining operations),
- stratification by the implementing body/beneficiary,
- stratification by types of operations and/or risk levels associated to groups of operations.

In case of stratification, sampling units in each stratum should be selected at random, unless the IAB decides to check all sampling units of some strata and randomly select sampling units from the remaining strata.

Generally, it is recommended that all expenditure of the sample shall be subject to audit. However, where the selected sampling units include a large number of invoices/other expenditure items, the IAB may audit them through sub-sampling. The items sub-sampled should be selected at random. In statistical sampling methods, the sample size should be calculated based on the relevant sampling parameters, whereas in non-statistical sampling methods it is recommended to audit at least 30 invoices/other expenditure items. It is also possible to apply a stratification design at the level of sub-sampling with invoices/expenditure items of some strata verified exhaustively and some strata checked by verification of a random selection of expenditure items. Stratification could be typically carried out based on the type of expenditure or the amount of invoice/expenditure item (for example by verification of all high-value items exhaustively and verification of a stratum of low-value items by randomly selected items).

The projection of error detected in the sample to the population level has to take into account the sampling design, i.e. the existence of stratification or not, the type of selection (equal probability or probability proportional to size), and any other relevant characteristics of the sampling design. Specific attention should be paid to projection of errors in case sub-sampling is used. In such a case, the errors detected in operations in sub-sampled items should be first projected to the level of operation. Then projection of errors to the population is carried out as in standard procedures without subsampling, the only difference being replacement of the detected error in sub-sampled items of the

operation by the error resulting from projection of errors found in sub-sample to the level of the operation.

For detailed technical information concerning methodologies on sample selection and extrapolation of errors, the IAB should consult the Guidance on sampling methods for audit authorities of 20/01/2017<sup>30</sup>, which provides clarification in regard to both statistical and non-statistical sampling methods. Doubts on sampling selection may also be addressed to our services, via the functional mailbox "Regio-Audit-Coordination@ec.europa.eu".

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<sup>30</sup> Link to [guidance\\_sampling\\_method\\_en.pdf](#).