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**REPLIES OF THE COMMISSION TO THE SPECIAL REPORT OF THE
EUROPEAN COURT OF AUDITORS**

**"DO THE EUROPEAN INTEGRATION FUND AND EUROPEAN REFUGEE FUND
CONTRIBUTE EFFECTIVELY TO THE INTEGRATION OF THIRD-COUNTRY
NATIONALS?"**

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EXECUTIVE SUMMARY

III. As required by the legal basis, the Commission will assess the contribution of the European Fund for the integration of third-country nationals and of the European Refugee Fund on the basis of detailed results received from the national evaluation reports covering the period 2007-2010 to be submitted by 31 October 2012. This should be done on the basis of common indicators set by the Commission in such a way as they are compatible with the Member States' own indicators at project level and as they produce meaningful results at national and European level. Meanwhile, in compliance with the legal basis, the Commission has published an intermediate report on the results achieved and on quantitative and qualitative aspects of the implementation which indicated that projects showed positive results as far as integration is concerned. This is not affected by the fact that some Member States were not in a position to spend their full EU allocation in the first two years of implementation, when the Fund was first launched.

IV. The Commission does not consider that the design of the EIF is fragmented, burdensome and inadequately coordinated. While recognizing that the design of the European Integration Fund could have been simpler, this design reflects legal constraints deriving from the Treaty which imposes different Funds for different target groups. It also reflects political choices made in 2006 and 2007. Annual programming exercises for instance were considered a means for the Funds to be able to respond to the political dynamics which evolved quickly both at EU and national level in the sensitive area of immigration. The comprehensive set of rules established in the Funds were developed to steer the new Authorities who were then inexperienced in the management of the Funds and to ensure sound management. The Commission has been and is proactive and has taken a pragmatic approach towards National Authorities to facilitate their management of the Funds whenever possible.

The Commission does not consider that the insufficient coherence and complementarity with other EU funds leads to overlaps, missed opportunities for synergy and risk of double-funding. The Commission will ensure that concrete arrangements are in place at national level to ensure complementarity and avoid overlaps.

V. The Commission agrees that Responsible Authorities in general are highly committed in fulfilling their core tasks. In cooperation with them, the Commission has worked extensively to compensate for the late adoption of the Funds and to facilitate as much as possible the first years of the Funds' implementation at national level where a whole system had to be set up. This was notably done by providing day-to-day and detailed guidance since the beginning. As also recognized by National Authorities, this has proved very useful and helped clarifying misunderstandings.

VI. Delays in approving annual programmes have been shortened significantly. However, even with experience, it proved challenging for both the Commission and the Member States to cope with the very difficult deadlines set in the legal basis.

In all cases where deficiencies in the Member States were identified, appropriate action has been and is taken by the Commission to avoid any risk of undue payment of any EU funds.

VII.a) The Commission agrees that, with the experience gained, it is now possible to move to a single multi-annual national programme. This is reflected in the future Multiannual Financial Framework 2014-2020, where it is proposed in the Commission's proposal for a Regulation for the Asylum and Migration Fund (adopted on 15 November 2011 (COM(2011)751)) to have a single multi-annual programme.

VII.b) The Commission has taken into consideration proportionality, the amount of the funds involved and the impact on resources in its proposal for a Regulation for the Asylum and Migration Fund. The management and control system requirements are defined in more detail in the new Financial Regulation.

VII.c) The Commission does not see the need for a comprehensive assessment of needs for integration regardless of whether migrants have EU or third-country nationality. EU citizens may not be subject to any integration measures which restrict their right to move and reside freely in the EU. The legal situation of third-country nationals and EU citizens is not the same and they cannot be targeted in a comprehensive assessment without making a clear distinction between them.

The Commission cannot design a fund structure which ends the separation of the target population on the basis of nationality. The difference of target populations is based on the difference of legal bases.

The EIF is part of the common immigration policy (Article 79 points 1 and 2 TFEU), which aims at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States.

EIF measures focus on the first steps migrants can take to become integrated in a new country, usually in the main urban settings. The ESF aims to intervene at later stages with measures that favour integration and inclusion mainly aimed at the participation in the labour market. In this second phase (ESF) migrants could be mixed with other target groups. The two Funds should be kept separate since they intervene in different moments of the migrants' integration. The Commission has always considered that the division and complementarity between the two Funds should be determined at the level of Member State.

VII.d) The Commission will pay greater importance to ensure that the Member States provide more detailed information on the coherence and complementarity in EU funds.

VII.e) The Commission agrees with the recommendation to have common indicators for the Member States in the Commission's proposal for 2014-2020.

The Commission has already included obligatory common indicators in the proposal for the draft Regulation for the Asylum and Migration Fund, which it adopted on 15 November 2011 (COM(2011)751).

VII.f) The proposed Regulation for the Asylum and Migration Fund, and the new Financial Regulation will require that the Member States have adequately established management and control systems with formally designated bodies before they will be able to receive EU funds.

The Commission is and will continue discussing and informing Member States of the new requirements.

INTRODUCTION

4. The current “General Programme on Solidarity and Management of Migration Flows for the period 2007-2013” (SOLID programme) was created as part of the multi-annual financial programming 2007-2013. It was a new programme compared to other EU instruments in shared management. In addition, it is worth mentioning that the SOLID programme brought together a dozen small programmes, pilot projects and preparatory actions that were previously running independently and without being coordinated among them. Further the SOLID programme allowed Member States to develop their own programmes.

9. The European Integration Fund targets the integration of third-country nationals as defined in the legal basis, at the time Article 63 point 3 (a) TEC (now Article 79 points 1 and 2 TFEU) for immigration, which concerned third-country nationals and not EU citizens. The legal basis for integration introduced through the Lisbon Treaty (Article 79 point 4 TFEU) covers measures established to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

EU citizens may not be subject to any integration measures which restrict their right to move and reside freely in the EU.

OBSERVATIONS

20. The Commission considers that the Funds' overall contribution to the integration of third-country nationals can now be measured beyond results at project level. By 31 October 2012, each Member State must submit a national evaluation report on the results and impacts of the Funds for the period 2007-2010. Based on the analysis of all the funded projects and the results achieved by each Member State on a set of indicators common to all Member States, it should be possible to have a meaningful assessment of the policy effect of the Funds. The national reports must assess the effectiveness, efficiency, value added and complementarity of the Funds and their impact at national level, both quantitatively and qualitatively. These Member State reports as well as the subsequent Commission reports, should adequately evaluate the results and impact of the Funds. The Commission reports will be available in 2013 and will be submitted to the EU institutions and widely published.

24. The Commission acknowledges that the definition of quantifiable targets in the annual programmes 2007 and 2008 has not been optimal. The emphasis in 2007 and 2008 was put on the adoption of annual programmes for which there was a real risk of loss of appropriations since the legal basis was adopted late (in 2007) and a number of activities needed to be performed before adopting the annual programmes. At that time, the Commission also wanted to preserve a degree of proportionality between the administrative burden for National Authorities and beneficiaries for annual programmes with small allocations and the need to have annual programmes adopted as soon as possible. Since 2009 the Commission is already paying more attention to these aspects and will make a close follow up for the next annual programmes for the countries where measurable targets would deserve a more thorough definition.

See also Commission's reply to paragraph 62.

26. During the closure process of the first annual programmes, the Commission has requested Member States to improve some aspects of the information provided in the closure documents in particular to gain a fuller picture of the attainment of the multi-annual and annual objectives.

27. The Commission considers that it can assess the effectiveness of the Funds. The fact that some Member States have to improve the actions' output indicators in their annual programme will not prevent the Commission from making its assessment. Further the national ex-post evaluation reports must be based exclusively on the indicators set out in the Commission templates, which are always measurable and in turn refer to project-based indicators, not to those set out in the national programmes.

29. The Commission considers that the presentation followed in the intermediate report is the correct way to table the operations covered by the programmes. The table in the report presents a synthetic overview of the different actions planned by the Member States and reflects the strategy actually chosen by each Member State. As such, it is considered very meaningful for understanding the Fund's implementation. However, the Commission acknowledges that the title of this table does not fully reflect its content.

The Commission also acknowledges that there is one inaccuracy for pre-departure measures funded by Germany.

30. At the time the Member States had to submit the national evaluation reports (30 June 2010), they had available results only for the first annual programme (out of seven in the programming period). Therefore, even if common indicators had been available at this time, their analysis would have been of limited value as the period analysed was too short. This explains why the Commission did not consider it a priority to develop common indicators but preferred to focus on launching the programmes and setting up effective management and control systems.

The situation is different for the national evaluation reports due on 31 October 2012, which should cover several completed annual programmes. The Commission has designed the common indicators to be used by all Member States for this evaluation in such a way as (a) they are compatible with the Member States' own indicators at project level (b) they produce meaningful results at national and European level. The same approach was followed for the ERFII final evaluation, with very good results.

The Commission has indeed proposed an obligatory set of common indicators from the start of the new programme for the period 2014-2020. This will enable Member States to collect data throughout the programming period, but, as explained above, does not change the availability of data at the time the evaluation report has to be submitted.

31. The Commission confirms that the examples of projects tabled in the intermediate report are not deemed to be representative projects, but 'success stories' identified by each Member State based e.g. on the project content, its effectiveness or its innovatory aspects.

Given the wide range of actions covered by the EIF and the high number of projects funded, there is no "representative" project.

32. The Court's remark refers to the part of the national evaluation report, where Member States were asked to express their assessment of the EIF, in particular as regards their needs and priorities. The feedback received was both positive and negative. The Commission respects the position expressed officially by Member States, even when it is negative.

The Commission has taken into account in its proposal for the Asylum and Migration Fund (2014-2020) the criticism expressed *inter alia* by the two Member States quoted by the Court, by enlarging the target group of the Fund and by simplifying the implementation procedures.

33. For the reason explained above, at the time the national evaluation reports had to be submitted, only very limited information was available to the Member States.

Detailed and meaningful information on the outputs, results and impacts of the Funds have to be made available in the national evaluation reports covering the period 2007 to 2010 due at the end of October 2012, because the timing of these reports allows covering several years of the Funds' implementation.

34. and 35. *Common reply*

The annual programmes of 2007 and 2008 were adopted in late 2008 and early 2009. Both 2007 and 2008 had overlapping eligibility periods and had to be run in parallel. Thus the combination of the late adoption and the challenges linked to the implementation of a new Fund (such as new Responsible Authorities, new rules, new management and systems in place), the first two years of implementation were exceptionally difficult. Further it is highly probable that the late adoption and challenges affected the rates of implementation. The Commission is closely monitoring the evolution of the implementation rate by Member States.

36. The report submitted by the Commission is an intermediate report on the results achieved and on quantitative and qualitative aspects of the implementation. Therefore, its purpose is linked to implementation and it is not an evaluation of the effectiveness of the Funds. It was deemed too early to assess the effectiveness of the Funds after only the two first years of EIF and one year of ERF III. First assessments on the effectiveness of the Funds are being measured on the basis of the national reports that were not available at the time of the Court's audit and are due on 31 October 2012.

37. The large majority of projects have achieved positive results for the integration of third-country nationals. The Fund has become in a very short period of time an effective tool at the EU level in the area of integration.

38. The fact that some projects did not work perfectly or provided average results is an embedded and acceptable risk in project management. Therefore it is not unreasonable that four out of 22 projects audited may not have achieved their objectives. However as the area of integration of third-country nationals and the shared management mechanism is new to the Member States one cannot expect a perfect success rate since the beginning. With the experience gained, Responsible Authorities have been developing more accurate targets.

Box 5 - Example of a failed project

The project "Merseyside Fire and Rescue Service (MFRS)" had to stop because the beneficiary overestimated the number of people from the target group which would have been affected by the project. Therefore, this example shows that the application, while being innovative, was not well conceived.

While the Commission provided pragmatic guidance to Member States on evidence of target groups, the Responsible Authority in this case applied stricter rules on beneficiaries than those imposed by the regulatory framework set by the Commission.

39. While acknowledging that some actions in annual programmes could have set more detailed targets or quantified results, this does not prevent them from having achieved good projects and programmes.

40. The Commission considers that the Fund is to be considered as an instrument that allows the financing of important integration activities in the Member States. In very few years the European Fund for the Integration of third-country nationals has become a tool that fosters integration-related activities in the participating Member States and is considered by Member States to be valuable for integration.

42. The first results on the effectiveness of the Funds can be adequately measured only after the feedback given by Member States on the first three years of implementation, i.e. as of October 2012. Moreover, what the Court has identified as "weaknesses" are deliberate choices made at the time that, in light of the experience, appear not be necessarily the best solution, in view of available resources and challenges.

44. The split between the two Funds was imposed by the different legal bases in the Treaty, leading inter alia to incompatible adoption procedures: ERF had to follow the co-decision procedure with the Council (qualified majority voting) and the European Parliament while EIF had to be adopted by unanimity in the Council with a simple consultation of the European Parliament.

While sometimes similar actions could legally fall under both the EIF and ERF, this is not the case for all actions since target groups of EIF and ERF and their needs differ.

44. *First indent* - Integration of refugees is a single strand of ERF and other actions are also covered by ERF area such as reception conditions. The ERF already existed as of 2000 and in order not to affect its continuity of operations, ERF III was conceived as a continuation of ERFII which proved to be a great success and adapted to the needs on the ground. The other actions of ERF would have been adversely affected if they had been combined in competition with EIF. Though they are two different instruments, the two Funds were conceived as constituting a coherent framework both politically and operationally, where each Fund reflects the objectives of a policy but exist in parallel. This is also reflected by the fact that both Funds share a common set of implementation and management rules as well as control and monitoring rules.

44. *Second indent* - In any programme, the costs must be reported in accordance to the projects to which they are incurred and non-eligible costs separated out.

45. The annual programming exercise, while challenging, was deliberately chosen by the Commission at that time. It was considered that it allowed for a better adaptation of the political dynamics which evolve quickly both at EU and national level in the sensitive area of immigration policies. It was also considered as the most suitable instrument to look more closely at the eligibility of the actions, taking into consideration the novelty of the actions proposed by the Fund and the limited experience of National Authorities in this context. However, it is possible that the impact has been more important than what had been foreseen at that time.

46. and 47. *Common reply*

Taking into account that both the Commission and Member States have now gained experience in this area, the Commission considers that resources could now focus on other activities concerning the implementation of the Funds.

The Commission has therefore proposed to move to multi-annual programming for the future Multiannual Financial Framework. This will also constitute a simplification and be in line with Structural Funds.

48. Although it cannot be ruled out that some Member States have not fully understood the requirements for lodging their requests for second prefinancing, this is not the only reason for the low number of requests for 2nd prefinancing. Indeed, in many cases, Member States overestimated the work required and sometimes even added bureaucratic burden at national level. Also, sometimes Member States decided to give priority to drafting their annual programmes and speeding up the closures for the programmes already implemented.

Despite the clarifications provided in 2010 the number of Member States requesting a second prefinancing remains very low.

To avoid any cash flow problems for final beneficiaries, the Commission has treated until now all second prefinancing requests as a matter of priority. However, in the context of growing pressure on payment credits in the EU budget this might not be possible any more in the near future.

49. The Commission is aware of the fact that the management and control system applied at Member States level can be considered heavy in comparison to the level of funds managed. To avoid unnecessary complications in the systems implemented by the Member States, the Commission provided clarification through two conferences in June 2008 and 2009 and a guidance note in 2010.

There were strong reasons for taking inspiration from the Structural Funds in the design of the management and control system. The main one was to benefit from their longstanding experience in managing EU funds and to avoid any risk of irregular spending in this new area for shared management.

50. Each Member State is free to choose its own management and control system. The Commission only sets the minimum internal control criteria that have to be complied with to give assurance on the management of EU funds.

Both Member States quoted by the Court represent cases where the National Authorities have added unrequested layers of checks.

51. What the Court has identified as "weaknesses" are deliberate choices made at the time by the legislator.

52. In 2005, the Commission carried out an ex-ante impact assessment that though it was not formalised, was taken into account during the discussions that led to the adoption of the Common Basic Principles, endorsed by the Justice and Home Affairs Council in November 2004, which reflect the needs and the objectives in the area of integration of third-country nationals. The Commission also consulted the National Contact Points on Integration as well as some NGOs.

53. The EIF is a response at EU level to the need to have a financial instrument that would be part of a common immigration policy and which would address the specific needs of third-country nationals once residing in the EU. Other EU programmes fund a wide range of actions some of which could also benefit the integration of third-country nationals but this is not their main objective. These other instruments are not specifically designed for the needs of third-country nationals, many of whom are also newly arrived with special needs during their first years of

residence. These other programmes are also concentrated in geographic areas that do not have a high concentration of third-country nationals.

None of the other EU instruments have the specific obligation to fund integration activities of third-country nationals in the Member States.

53.a) to 53.c) *Common reply*

The European Social Fund (ESF) was set up in order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living. It aims to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining (Article 162 TFEU). Its objective is also to reduce differences in prosperity and living standards across EU Member States and regions, and therefore promoting economic and social cohesion. It is devoted to promoting employment in the EU. Funding is spread across the Member States and regions, in particular those regions where economic development is less advanced. The EIF, on the other hand, expresses the political choice to have integration measures funded in participating Member States without depending on the political choice of Member States to include or not such measures in their programming for Structural Funds, nor on the level of competitiveness of regions. The level of ESF funding differs from one region to another depending on their relative wealth, if the GDP per capita is more or less than 75% of the EU-25 average. This distinction between regions does not necessarily reflect the concentration of migrants to certain (primarily) urban regions, nor the particular needs as far as integration is concerned.

With the EIF, Member States consider it important to have many projects funded at national level in order to have a wide impact and take account of the national specificities. Member States considered and still consider integration of third-country nationals as being their main responsibility, while the European level can provide the framework for interventions in accordance with the principle of subsidiarity. This is the reason why 93% of the EIF is mainly managed through shared management, national programmes.

As Commission managed programmes, the Research, Education and Culture programmes cannot respond to the specific requirements and political dynamics which evolve quickly both at EU and national level in the sensitive area of immigration policies. The Member States' national programmes support a large number of actions such as awareness raising campaigns on integration or projects targeting integration at local level, which is possible with EIF, managed through shared management.

Although a few Research, or Education and Culture (EAC) projects tackle integration, this cannot be compared with the large spectrum of integration actions covered by EIF, a specific dedicated instrument. In addition, EAC projects are transnational projects aiming at disseminating good practices in different Member States and have therefore very different objectives and scopes.

54. to 59. *Common reply*

The EIF is complementary to the European Social Fund (ESF). While the ESF aims to increase occupational and geographical mobility of workers within the Union, the EIF is targeted to addressing specific needs in the area of integration arising from the development of the common integration policy. Therefore, EIF measures are not identical to those funded by the ESF by

including integration into all aspects of society.

The legal bases for the ESF and EIF are different and the two Funds were developed from two different policy contexts. The ESF is part of the EU cohesion policy, which aims to strengthen the EU's economic, social and territorial cohesion, in particular by reducing disparities between the levels of development of its various regions. The EIF is part of the common immigration policy which aims at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States. Considering these different policies and the two different legal bases, the two Funds target different objectives. These different purposes could not be obtained if the Funds were a single Fund.

The ESF-supported actions addressing inclusion and integration cover both EU citizens and third-country nationals, whereas the EIF targets the particular needs of third-country nationals, in particular newly arrived. The target population of the EIF is not necessarily concentrated on the regions that receive the highest ESF support.

Most ESF-supported actions on inclusion and integration focus on meeting the overall objective of increased employment. Actions funded under the EIF target a general integration in the Country, such as introduction courses, interaction between communities, intercultural dialogue, monitoring of integration results etc.

As some actions could be covered under the two Funds and have similar objectives and in order to ensure complementarity between the Funds, the Commission services follow internal consultations and procedures to avoid overlaps when adopting the EIF and the ESF programmes.

However, as national programmes, the emphasis must be on the follow-up mechanisms by the Member States where they are obliged to ensure complementarity and avoid any overlap between the Funds.

The Commission is putting emphasis on these aspects during monitoring visits to Member States and additional attention will be paid to this important aspect.

Based on many positive assessments by Member States of the impact and added value of the EIF to contribute to the establishment of integration strategies, integration centres, introduction courses, monitoring systems etc. in the Member States, the Commission maintains that integration needs can be comprehensively addressed with the current and proposed structure of the Funds in the Home Affairs area.

Box 7 – Portuguese call centres and ACIDI comparison of EIF and ESF funding

In the specific case of Portugal, the application of the national law has the effect that only two organizations are beneficiaries of the EIF. There has been a risk of overlap for the activities carried out by these organizations which are eligible under the EIF and the ESF. In 2012, the Commission asked Portugal to take the necessary measures so as to open up the access of the EIF to relevant organizations involved in integration.

Concerning ACIDI, the risk concerns the distribution of staff costs for personnel that work on the two projects funded by EIF and ESF. The Audit Authority is aware of this risk and will follow it up.

62. The EIF and ERF legal bases were adopted after a long negotiation process. In addition, the

legislative procedures (co-decision by qualified majority voting for ERF and unanimity with consultation of the European Parliament for EIF) applicable for the adoption of the legal basis were quite long taking into account that the Commission proposal was adopted in April 2005. The same applied for the Implementing Rules that, while having been discussed ahead of their adoption (as of 2007) with Member States through expert meetings, common formats and guidance documents and bilateral technical advice had to be adopted with the assistance of the management Committee which could be established once the Decisions had entered into force.

In view of these delays, the Council has increased in the legal basis the eligibility period of 2007 annual programmes to three years not to jeopardize the implementation of the first annual programmes by Member States.

63. For 2007 and 2008, in addition to the late adoption of the regulations, the legal basis imposed a heavy process before the Commission could approve annual programmes and therefore a lot of conceptual work was required to make the Funds operational from both the Commission and the Member States, such as the definition of multi-annual and annual programmes by Member States and their approval by the Commission. Member States were also required, as provided in the legal basis, to put in place management and control systems that would ensure a sound management of the resources, what had to be assessed by the Commission.

In light of the above and taking into account also the novelty of the Fund, it had been difficult to cope with the deadlines set out in the legislation which are very difficult to meet.

64. The adoption of annual programmes is now much quicker and within a reasonable timeframe, while the deadlines set out in the legal basis proved to be very difficult to attain despite the experience gained and the efforts made by the Commission to comply. It was also necessary to ensure that annual programmes were of good quality with adequate description of eligible actions to comply with the objectives of the Fund. This was not always possible within the imposed deadline.

65. The Commission put special emphasis on accompanying National Authorities in the management of the Funds at national level. Guidance was provided through daily contacts between the Commission's desk officers and the Member States but also via the organisation of six seminars/conferences and many presentations during the SOLID Committee meetings. The Commission also issued 19 guidance notes on the implementation of the SOLID Funds.

66. Taking into account the delays in the adoption of the legal framework, the Commission considers that guidance has been provided as soon as possible. It is true that the Implementing Rules were issued in March 2008 but have been extensively discussed with Member States well ahead of their adoption. As of April 2008 the Commission has organised a seminar on the Implementing Rules in order to draft the manual on eligibility rules that was distributed to Member States in June 2008. In addition, the fact that Member States were not able to spend their total EU allocation is not linked to the date when they received the guidance but mainly to the novelty of the Fund, the inexperience of the Responsible Authorities, the short eligibility period, and the fact that the two annual programmes 2007 and 2008 were run in parallel.

69. The legal basis does not request Member States to establish a system for collecting and aggregating the key operational and financial indicators as this might result in disproportionate administrative costs. However, the legal basis requires Member States to establish for each project key operational and financial indicators, to be monitored and communicated to the

Responsible Authorities. The fact that this obligation was adequately included in grant agreements signed by the Responsible Authorities was verified during audits on the spot. However, for the three Member States mentioned by the Court, Commission audit missions took place before any monitoring activities had started, thus making it impossible to audit this part of the management and control system (scope limitation).

70. The Commission understands that the weaknesses identified by the Court refer to two out of the five on-the-spot audited Member States. The lack of clear relationship between the three authorities in Germany was reported by the Commission following its mission of March 2009. The action plan put in place by Germany to remedy this deficiency was therefore duly monitored by the Commission.

While the Commission agrees that the model applied in the SOLID Funds generated questions from the Member States, all these questions were resolved through general and targeted guidance provided to the Member States.

As regards Germany, this has proven to be insufficient and this very specific case is followed-up closely by the Commission.

71. and 72. *Common reply*

The Commission is aware of the problems existing in Portugal.

It has taken action in 2012 by providing targeted guidance to Portugal, and reinforcing bilateral contacts at all levels of responsibilities in order to improve the management and control system in Portugal. In parallel, safeguarding measures are being taken whenever the Commission has identified that there was a risk that ineligible expenditure may be charged to the Fund. Where the risk for the funds will be confirmed, financial corrections will be applied.

73. The setup of the SOLID Funds was challenging. This was known from the beginning and explains why the annual budget available increased each year over the 7-year programming period. The programming and reporting requirements are not onerous. Each year all annual programmes of all the Member States have been adopted and are being implemented by the Member States, therefore the Member States are not hindered. Any shortcomings linked to insufficient resources allocated by the Member States is not in line with the legal basis that foresees that Member States shall allocate sufficient resources for each authority, when designing their management and control system.

74. The Commission considers that most of the Responsible Authorities are satisfactorily performing most of their fundamental tasks. This is reflected in the Annual Activity Report of DG Home Affairs.

75. The Commission has provided extensive guidance to Member States as regards eligibility rules. It repeatedly informed Member States that the manual was for National Authorities and that providing this document to final beneficiaries without proper instructions and recommendations may not be appropriate. However, the Commission made clear that it was crucial that final beneficiaries received guidance on eligibility rules. Many Member States organised training for beneficiaries on eligibility rules and also translated the manual.

CONCLUSIONS AND RECOMMENDATIONS

76. The Commission considers that the positive results achieved by projects funded by the EIF confirm its value added. For the overall success of the programme detailed information on the outputs, results and impacts of the Fund were made available in the national evaluation reports covering the period 2007 to 2010 that are due by 31 October 2012. The timing of these reports allows covering several years of the Fund's implementation. At the time the Member States had to submit the national evaluation reports, this was not possible because Member States had available results only for the first annual programme out of seven in this programming period.

The corresponding Commission evaluation report will provide detailed information on the outputs, results and impacts of the Fund at EU level, based on several implementation years.

77. The Fund is considered effective, relevant and added-value by the Commission, the Member States and other stakeholders. While elements can be improved and are being improved and the design could have been simpler, this has not prevented the Fund from being a robust tool that is progressively reaching its fundamental objectives. Complementarity with other EU Funds is ensured at EU level. Mechanisms in place at national level to guarantee this complementarity will be closely further monitored by the Commission.

78. In the Commission's view, the findings are not necessarily applicable to the External Borders Fund and the Return Fund, where there are very different actions and beneficiaries.

Reply to the title before paragraph 79. (Effectiveness of EIF and ERF could not be measured)

Even though the effectiveness of EIF and ERF could not be measured yet, the Commission understands that individual projects are successful.

79. The Commission will address these weaknesses with the Member States concerned to ensure that the shortcomings are addressed in the Member States concerned.

However, this should have no impact on the quality of the national evaluation reports that are due by 31 October 2012, because the Commission has requested that these reports are based on the individual projects (not annual programmes) funded so far and on their results and effects; and that, for all the projects taken together, the assessment is done against the multiannual strategy set at the beginning of the multiannual programming period by each Member State. This strategy is the framework of reference for the evaluation.

80. The data included in the Commission's intermediate report provide a comparison between the Member States and their annual programmes. At the time of submission of evaluation reports, the Member States had to report results from one out of seven years of annual programmes. Hence the assessment of EIF results could only be limited in 2010. The assessment of the results will be available in the national evaluation reports which the Member States have to submit by 31 October 2012.

The Commission has designed the common indicators to be used by all Member States for the current evaluation in such a way as (a) they are compatible with their own indicators at project level and (b) they produce meaningful results at national and European level. The same approach was followed for the ERF II final evaluation, with very good results.

Recommendation 1

The Commission agrees with the recommendation to have common indicators for the Member States in the Commission's proposal for 2014-2020.

The Commission has already included obligatory common indicators in the proposal for the draft Regulation for the Asylum and Migration Fund, which it adopted on 15 November 2011 (COM(2011)751).

Recommendation 2

The Commission accepts the recommendation that, before approving the programmes, the Commission should require Member States to set SMART indicators and set up IT systems to collect data from the start.

For the Asylum and Migration Fund for 2014-2020, the Commission has proposed to have common SMART indicators and the Member States will indeed be obliged to use them. In addition, the Commission will request the Member States to set up IT systems to collect these data in a timely manner.

Recommendation 4

The Commission agrees with the recommendation that the Commission and Member States should exchange good practices on monitoring and evaluation.

The Commission intends to propose to set up a Monitoring and Evaluation Network composed of the Member States and the Commission. The network would meet at least once a year.

81. The Commission considers that individual projects achieved positive results that contribute to the objective of the Fund to contribute to better integration of third-country nationals.

82. The implementation rates of the first years of implementation of the Funds followed a positive curve and increased from 66% to 77% from 2007 to 2008. This trend is maintained for 2009 and is expected to continue for the 4 remaining years of implementation of the Funds.

83. The Commission does not consider that the design of the EIF is disproportionate and excessively burdensome.

Despite the fact that it is heavy, the system of annual programming was deliberately chosen for very important political reasons linked to:

- the field of intervention that is changing and needs to allow regular re-assessment of the budgetary allocations per Member States;
- the novelty of the Fund that needed close monitoring of Member States by the Commission;
- the possibility to discuss on a regular basis the activities of the Member States in the policy area; and
- to check the eligibility of some actions that could be sensitive.

84. Thanks to the experience gained from the first years of implementation of the Fund and in the light of the administrative burden, the Commission recognizes that annual programming is heavy and that resources could be now better allocated to other activities under the Funds.

85. In the next programming period 2014-2020, the Commission seeks for an alignment with the Structural Funds, as far as possible.

Recommendation 6

The Commission has therefore proposed to have multiannual programming exercise in the context of the future Fund, which also corresponds to the Court's recommendation. This will also constitute a simplification and be in line with Structural Funds.

Recommendation 7

The Commission considers that this recommendation is addressed to the co-legislators.

Recommendation 8

The Commission has already implemented the recommendation in its proposal for a Regulation for the Asylum and Migration Fund, which it adopted on 15 November 2011 (COM(2011)751).

86. There was an assessment of integration needs in the EU leading up to the formulation of objectives concerning the rights and integration of third-country nationals residing legally in the EU, agreed by the European Council in Tampere 1999, in the Hague Programme 2004 and in the Stockholm Programme 2009. These objectives were further developed into the Common Basic Principles on integration policy in the EU in 2004, based on the needs identified in and agreed by all the Member States. On this basis, the Commission has developed its Common Agenda for Integration in 2005 and the EIF was developed as a financial instrument supporting Member States' actions towards achievement of these objectives and compliance with the Common Basic Principles.

87. The EIF is conceived as complementary to ESF. The EIF is focused on the first steps new arrivals take in society. ESF intervenes at a later stage. The point where this transition takes place is to be determined and checked by the Member State, in line with the principle of subsidiarity. In short, the Member States were required to take the necessary arrangements to ensure cooperation and coordination mechanisms and to ensure that interventions under EIF are specific and complementary to ESF. Overlaps between the Funds are limited to possible projects that the Member States must control and the Commission services monitor. The Commission requested in all annual programmes a description of the mechanisms to ensure complementarity and will closely follow up the concrete arrangements in place at national level to ensure that there is no overlap between EIF and ESF.

Recommendation 9

The Commission does not see the need for a comprehensive assessment of needs for integration regardless of whether migrants have EU or third-country nationality. EU citizens may not be subject to any integration measures which restrict their right to move and reside freely in the EU. The legal situation of third-country nationals and EU citizens is not the same and they cannot be targeted in a comprehensive assessment without making a clear distinction between them.

Recommendation 10

The Commission cannot design a fund structure which ends the separation of the target population on the basis of nationality. The difference of target populations is based on the difference of legal bases.

The EIF is part of the common immigration policy (Article 79 points 1 and 2 TFEU), which aims at ensuring efficient management of migration flows and fair treatment of third-country nationals residing legally in the Member States.

Recommendation 11

The Commission agrees to make a closer follow up in the future Multiannual Financial Framework 2014-2020 of the arrangements put in place at national level to ensure coherence and complementarity with EU Funds.

88. The rate of implementation in 2007 and 2008 was impacted by the reduced eligibility period (reduced by two-thirds for 2007 and by one half for 2008) because of the late adoption of the legal basis and the arrangements to be put in place by the Member States. In addition, the two annual programmes were run in parallel which implied that the time for absorption of the two years EU allocations by responsible authorities which were relatively new and inexperienced, was very short.

Eligible actions were well defined in the legal basis from the start and therefore, the risk of funding ineligible actions is low.

90. The Commission is making efforts so as to reduce the delay for adoption of annual programmes and reports, mainly by streamlining its own procedure and by implementing the same computerised system of communication with the Member States as the one of the Structural Funds. It is confident that this will simplify the administrative processes at each stage of the procedure.

Recommendation 12

The Commission fully agrees with the recommendation to use the lessons learnt from the programming period 2007-13 and has taken all steps to ensure that the legal basis will be adopted on time, in particular by adopting its proposal for a Regulation for the Asylum and Migration Fund on 15 November 2011. However, the Commission is not the only actor in the adoption process and cannot guarantee the achievement of this objective.

91. Taking into account the delays in the adoption of the legal framework, the Commission considers that guidance has been provided as soon as possible. Implementing Rules were issued in March 2008 but have been extensively discussed with Member States well ahead of their adoption. As of April 2008 the Commission has organised a seminar on the Implementing Rules in order to draft the manual on eligibility rules that was distributed to Member States in June 2008. In addition, the fact that Member States were not able to spend their total EU allocation is not linked to the timing of the guidance but mainly to the novelty of the Fund, the inexperience of the Responsible Authorities, the short eligibility period, and the fact that the two annual programmes 2007 and 2008 were run in parallel.

92. A management and control system is composed of different blocks, all of them are not needed at the outset. Only the blocks that were in use at the first phase of the programming period could be checked on-the-spot by the Commission. Other ones could only be described on paper.

93. The case of the Member State quoted by the Court is well known by the Commission and mitigating measures have been taken to avoid any undue payment of EU Funds.

Recommendation 13

The Commission agrees to discuss with Member States and adopt guidelines for implementation of the new Fund as soon as possible whenever possible, taking into account the timetable for adoption of the new Fund which does not depend only on the Commission.

Recommendation 14

The system foreseen in the revised Financial Regulation will be different from the current one and will rely on formal designation by the Member States based on designation criteria defined in the legal basis.