



## Case study

### Topic 01: ESIF Architecture

# Germany



EUROPEAN UNION  
Cohesion Fund  
Operational Programme Technical Assistance



MINISTRY  
OF REGIONAL  
DEVELOPMENT CZ



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## List of abbreviations

<b>AA</b>	Audit Authority
<b>BAFzA</b>	Federal Agency for Family and Civil Affairs
<b>BMAS</b>	Federal Ministry of Labour and Social Affairs
<b>BMBF</b>	Federal Ministry of Education and Research
<b>BMF</b>	Federal Ministry of Finance
<b>BMWi</b>	Federal Ministry of Economic Affairs and Energy
<b>CA</b>	Certification Authority
<b>CF</b>	Cohesion Fund
<b>EAFRD</b>	European Agricultural Fund for Rural Development
<b>EMFF</b>	European Maritime and Fisheries Fund
<b>ERDF</b>	European Regional Development Fund
<b>ESF</b>	European Social Fund
<b>ESIF</b>	European Social and Investment Funds
<b>EC</b>	European Commission
<b>EU</b>	European Union
<b>EUR</b>	Euro
<b>EY</b>	Ernst & Young
<b>IB</b>	Intermediate Body
<b>IT</b>	Information Technology
<b>MA</b>	Managing Authority
<b>NCA</b>	National Coordination Authority
<b>NRW</b>	Northern Westphalia
<b>OLAF</b>	European Anti-Fraud Office (Office de Lutte Anti-Fraud)
<b>OP</b>	Operational Program
<b>PA</b>	Paying Authority
<b>ROP</b>	Regional Operational Program
<b>SAB</b>	Development Bank of the free state of Saxony
<b>SCO</b>	Simplified cost option

# Germany

## Implementation structure

Germany represents a heavily decentralized model, with high-level coordination of operational programs at a federal level and factual implementation of the ESIF at regional level. This structure is given by the federative character of Germany consisting of 16 independent and equal states, which manage their affairs independently and in mutual partnership. Implementation varies between states, between states and the federal level, and sometimes also between programs in one region that are strictly separated organizationally. At regional level, there is an effort to link programs funded from national and ESIF sources, in particular by integrating the thematic implementing bodies that also manage national programs.



### Positive aspects

- ▶ Stability and continuity of the implementation
- ▶ Clear delimitation of competencies within the IS
- ▶ There is little need for coordination between programs and institutions
- ▶ Direct application of the European Regulation
- ▶ Good organization of controls and audits not burdensome for the implementation structure

### Negative aspects

- ▶ High total cost of the implementation structure across all states due to limited economies of scale
- ▶ Very low interconnection of IT systems and associated high costs
- ▶ Low support for and slow pace of introducing new tools such as integrated or financial instruments

## Key aspects of the implementation structure

# 1

### Disparity

There are significant differences across Germany in the actual setting of the OP, the type of institutions involved in implementation or in IT systems. The ESIF reflects regional specificities, with ESI funds being more important in Eastern states than in Western states.

# 2

### Autonomy & Independence

Operational programs operate independently and central (federal) coordination is weaker compared to the CR. Individual states are highly independent in setting up implementation rules, developing IT systems, and using resources. As a result, there is considerable diversity between regions and operational programs.

# 3

### Partnership & Collaboration

Representatives of the implementation structure's institutions meet formally at coordination meetings organized by the federal bodies responsible for coordination. Additionally, there are informal communication channels to eliminate overlays in programming.

# 4

### Direct application of the European Regulation

Germany is able to apply the EU Regulation directly without the need to adopt national duplicate regulations. There are no discrepancies between European and national regulations; compliance with the Regulation is thus ensured.



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## 1. Basic characteristics of the ESIF system

Number of operational programmes (OP/ROP)	Number of territorial units (NUTS1/NUTS2/NUTS3)
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47 (3/44)

16/38/401

Total allocation planned (according to the programming period and according to the fund)

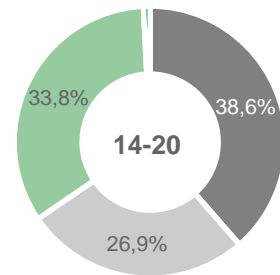
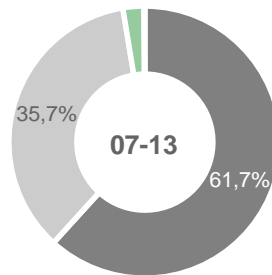
Total allocation  
(mil. EUR)

14-20: 27 913



07-13: 24 733

- ERDF
- CF
- ESF
- EAFRD
- EMFF



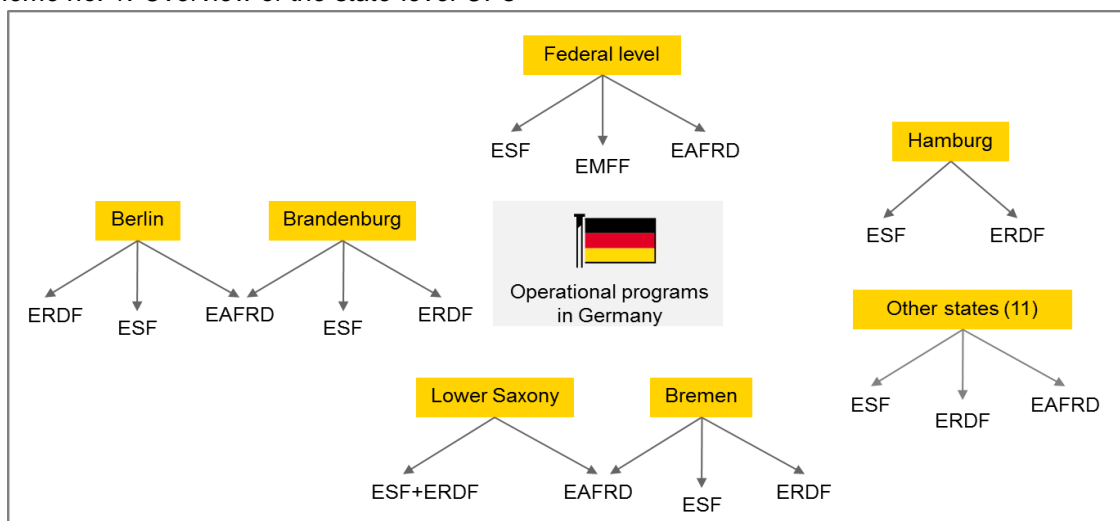
### Overview of operational programmes

The ESIF implementation is strongly decentralized and consists of:

- ▶ 1 federal ESF program;
- ▶ 1 federal EAFRD program;
- ▶ 1 federal EMFF program
- ▶ 15 state ERDF programs;
- ▶ 15 state ESF programs;
- ▶ 1 joint state ESF/ERDF program in Lower Saxony;
- ▶ 13 state EAFRD programs.

The following scheme illustrates the distribution of operational programs per fund in particular states in Germany:

Scheme no. 1: Overview of the state-level OPs







The implementation varies between the federal and regional level and also among single states and even single programs. The overview of the programs on **federal level, in Saxony and Bavaria** is shown on the following scheme.

*Scheme no. 2: Overview of national OPs<sup>1</sup>*

	Allocation in €	Absorption	Managing Authority	
Federální	Federal Germany - ESF	4 829 738 807	10 %	Federal Ministry of Labour and Social Affairs
	Germany – Rural Network	10 000 000	39 %	Federal Ministry of Food and Agriculture
	Maritime and Fisheries-Germany	286 131 512	17 %	Federal Ministry of Food and Agriculture
Státní	Saxony - ESF	828 377 076	15 %	Saxony Ministry of Economic Affairs, Labour, and Transport
	Saxony - ERDF	2 611 275 093	17 %	Saxony Ministry of Economic Affairs, Labour, and Transport
	Saxony – Rural Development	1 138 776 714	26 %	Saxony State Ministry of the Environment and Agriculture
	Bavaria - ERDF	1 411 766 474	23 %	Bavarian State Ministry of Economic Affairs, Energy, and Technology
	Bavaria – ESF	595 757 172	26 %	Bavarian State Ministry of Labor and Social Affairs, Family, and Integration
	Bavaria – Rozvoj venkova	2 631 820 519	46 %	Bavarian State Ministry for Nutrition, Agriculture, and Forestry

The level of the differences depends on which particular OPs are being compared. The main differences could be described as follows:

- ▶ **Different size of the program:** There are small programs in the small and especially Northern states and big programs in the big states. For example, where a small ERDF program is, there is also a small and specialized MA. The big programs cover more topics which require more requirements for the procedure and more capacity (e.g. Bavaria and Saxony).
- ▶ **Different Implementing Bodies:** The most usual contact point with beneficiaries are either private entities such as development banks (e.g. Saxony), or the state and regional governments (e.g. Bavaria). However, each state operates with different type and number of Implementing Bodies.

<sup>1</sup> Data gathered on 18.10.2018 from <https://cohesiondata.ec.europa.eu/>. Allocation is in EUR. Absorption means actual expenditure declared by the projects to the programmes



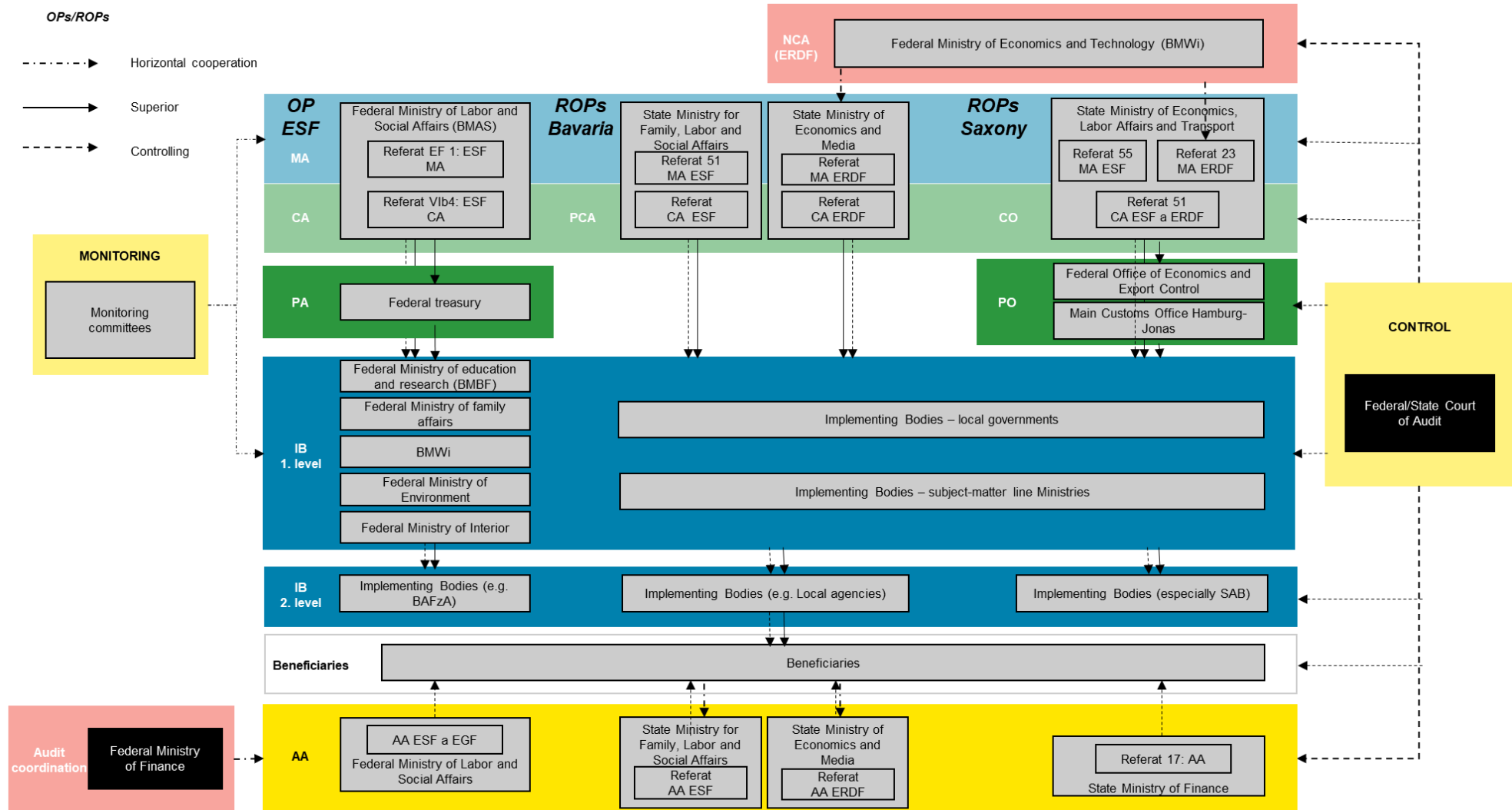
- ▶ **Different engagement of the AA and its cooperation with the MA:** Where the authorities do not cooperate well while the AA is very active, the implementation is more difficult and slower. Where the MA takes actions in cooperation with the AA, less mistakes occur and the implementation is smoother (e.g. Saxony and Bavaria).
- ▶ **Formal or influential role of the monitoring committees.**

The impact of ESIF on regional development is usually higher in the former Eastern states such as Saxony and lower in the **well-developed states** such as Bavaria. The federal ESF program plays a supplementary role for initiatives with a federal impact and higher importance on the federal level. The national development initiatives such as infrastructure development are usually funded from a national funding similar to ERDF as there is no federal ERDF program.

The implementation structure is depicted on the following scheme where the exact structure of **the federal ESF and the structures of the regional ESF and ERDF in Saxony and Bavaria** are shown. The other states may utilize slightly different institutions involved since the implementation is very independent on the state level (i.e. there might be 16 different schemas for all German states).

## 2. Simplified scheme of the implementation structure

Scheme no. 3: Simplified scheme of the implementation structure







### 3. Answers to the evaluation questions

#### 3.1. Features of the system

There is a long tradition of German states' autonomy which is reflected in the German Constitution. Due to the federal structure of Germany, the concrete implementation of ESIF mainly takes place at the state level (closer to the beneficiary) where the state ministries are involved. The national strategy is concrete - taking into account the respective regional and federal sectoral particularities - through the operational program (OP). The competencies and responsibilities of the institutions of implementation structure usually correspond to the Regulation and no overlaps have been identified, respectively mentioned as a serious problem by the respondents. The responsibilities of individual authorities do not often go beyond those formalized in the Regulation and thus, only a basic overview highlighting any specifics is provided in the following text.

Only when the EU develops new obligation such as designation or annual reporting, implementation or adjustment of the relevant process takes some time and there might be a difference in the formal setting and the informal procedures at the beginning. According to most of the respondents, frequent changes from the EU level make the implementation more difficult.

*„The implementation structure works on the principles of cooperation and common discussion. The subordinate bodies are supervised by the superior ones based on reports, the data and information shared with each other... There is no substantial difference in the practice to the Regulation. The description of the implementation structure is identical to real handling of procedures.”*

Representative

Federal Ministry of Labour and Social Affairs (MA)



##### 3.1.1. Distribution of competencies

Federal authorities play rather a coordination role in managing and controlling the programs. The functions of the **National Coordinating Authority** are carried out by the BMWi which coordinates ESIF implementation as a whole and in particular the regional ERDF programs (ESF programs are coordinated by BMAS, the MA of federal ESF program). It also represents German single opinion in front of the EC. Its department EU-Strukturpolitik consists of eleven referents, specialists and co-workers. The NCA fulfils purely coordination, supportive and representative functions in its relation with the Managing Authorities, which are fully responsible for the implementation of the OPs. The NCA has the following competencies emerging from the Regulation:

- ▶ Creation of policies and strategies for ESIF;
- ▶ Responsibility for the partnership agreement;
- ▶ Coordination and implementation of ERDF and ESF programs;
- ▶ Coordination between ministries and regions;
- ▶ Serving as an ESIF contact point;
- ▶ Coordination of all agenda of regional ERDF programs, including financial management and control;
- ▶ Distribution of funds between federal and regional programs;
- ▶ Communication with the EC.

The role of BMWi as NCA has to be perceived in the light of specific structure and autonomy of the states and programs as described in the text above. Its authority above the individual OPs is not very strong and cannot be compared to the role of NCA in the Czech Republic, which is far more formalized and focused on managing ESIF. Any ambitions towards the unification would face objections from individual states and thus there is not much demand for it on both sides.



The **Managing Authority** of each OP is incorporated into the respective line ministry. The MA of the federal ESF is BMAS, which above competencies described below coordinates all German ESF and is responsible for the OP implementation in front of the EC. On the state level, the MA is usually located in the State Ministry of Economic Affairs either for both ESF and ERDF or only for ERDF (then the State Ministry of Labour Affairs is usually responsible for ESF).

The MA's **competencies** reflect the Regulation, particularly deal with:

- ▶ Developing the controlling and management system of the programs (incl. IT system development);
- ▶ Delegating its powers to the Intermediate and Implementing Bodies;
- ▶ Controlling, counselling and coordination of Intermediate and Implementing Bodies (incl. organizing conferences, working groups and meetings etc.);
- ▶ Monitoring the progress of the relevant OPs and managing the Monitoring Committees;
- ▶ Reporting the program progress to the EC;
- ▶ Preparing a unified communication strategy and overall communication;
- ▶ Releasing guidelines, rules and regulations, setting up the application procedures and the direction of the program;
- ▶ General program evaluation and preparation of the evaluation report (evaluation and monitoring support is usually outsourced by a public contract to private consultancies).

The **Auditing Authority** of each program is an independent body responsible for auditing the other institutions of the implementation structure (system audit and audit of designation) as well as the beneficiaries (audit of operations). The federal ESF AA is also located in the independent department of BMAS reporting only to the state secretary and in Federal administration office; in the state OPs there is either an independent department of the MAs involved (e.g. Bavaria) or the State Ministry of Finance (e.g. Saxony).

*„This concept has a positive effect that the institutions easily communicate and cooperate together; they have a good partnership which enables effective implementation of federal ESF. However, the independence is always assured.“*

Representative

Federal Ministry of Labour and Social Affairs (MA)



*„The Bavarian MA and AA are within the same Ministry, though the departments are different. The personal and organizational independence is secured because the AA is organizationally the supreme department. This model has been approved by the EC because ESF is a small program in Bavaria.“*

Representative

Bavarian State Ministry of Economic Affairs and Media, Energy and Technology (AA)



*„The AA in Saxony is responsible for all structural funds and has three specialized teams only for ERDF, ESF and cross-border programs within one organizational unit. The team members can rotate between ERDF and ESF if necessary (there is not much difference in approach and nature of the audits, only the topics are different).“*

Referent

Saxon State Ministry of Finance (AA)



Each AA has reporting duties towards the EC and prepares its own audit strategy, manual and annual performance reports, conclusions and recommendations on operations, system, and financial matters. The **coordination of all AAs belongs to the Federal Ministry of Finance (BMF)**. For more information about audit coordination see the final section about audit and controls below.



The **Certifying Authority** is usually a department of the relevant MA which receives the financial flows from the EC, forwards them according to the MA's demands to the Intermediate Bodies and is responsible for expenses certification, accounting and reporting. The **Paying Authority** is usually set up within the CA or it is an independent authority, which appropriates the funds to the beneficiaries.

### 3.1.2. Subject-matter Intermediate Bodies

There are independent subject-matter Intermediate Bodies managing the programs regarding their field of expertise and issuing detailed rules for its sub-program, are responsible for programming, choosing the topics and reaching the indicators, monitoring and evaluation of their sub-programs. They also often participate in the pre-selection process of applications for grants. The competencies and responsibilities are delegated by the MAs to the Intermediate Bodies by public inter-ministerial treaties which regulate the role of the institutions involved and follows the responsibilities stipulated in the Regulation. After signing the treaty and fulfilling its preconditions, the Intermediate Bodies receives the money from the CA on the MA's demand which can be then awarded by the Implementing Bodies to the beneficiaries.

Any other subject matter authorities outside the implementation structure has not been identified; the content of the programs is set up by the line ministries either on federal or state level.

For instance, the Intermediate Bodies of the federal ESF program are five federal ministries such as Ministry of Education and Research, Ministry of Family Affairs, Senior Citizens, Women and Youth, Ministry of the Environment, Nature Conservation and Nuclear Safety, Ministry of Interior, Building and Community and BMWi. The boundaries are given by the thematic responsibility of each Ministry so there is no overlap in competencies despite the fact that the specialization of the Ministries does not reflect the priority axes nor priority topics of federal ESF. Such set-up is not a source of significant problems and no major objections have been encountered.

*„Despite the fact that all ministries are equal in rights according to the constitution, they accept their role as the Intermediate Bodies by the public treaties and the superior role of BMAS as the MA. If other ministries do not want to accept this, they cannot receive the funding from ESF.“*

Representative

Federal Ministry of Labour and Social Affairs (MA)



### 3.1.3. Implementing Bodies

The next level of the implementation structure is **Implementing Body** which is usually a federal or state supporting agency established or controlled by the Intermediate Body or the MA (e.g. federal ESF), local governments (e.g. Bavaria with strong position of regions) or development banks (e.g. SAB for ERDF and ESF in Saxony). The Implementing Body does the actual project work directly with the beneficiary and has the following responsibilities delegated by public treaties regulating takeover of responsibilities by the Implementing Body (there is a new treaty for each period):

- ▶ Direct contact and communication with the beneficiary and providing guidance and support;
- ▶ Application procedure (issuing the open calls), the project examination and selection, incl. financial part (on its own or supporting IBs);
- ▶ Issuing granting and other individual ESIF-related decisions establishing the binding rights and duties to the beneficiary (*Bescheid*);
- ▶ Dealing with complaints;
- ▶ Program administration and project monitoring;
- ▶ Managing first level controls.

The Implementing Body receives the money from the Intermediate Body, issues the granting decision after the Intermediate Body's approval and awards the funding to the beneficiary after presenting the bills and invoices. The Intermediate Body or MA deals with a beneficiary only when an important project with a wider effect or major issues appears.



#### 3.1.4. Setting-up processes and relations between MA, IB and Implementing body

The general processes are set by the MAs after consultations with the Intermediate Bodies, the partners and other regions within the legal framework given by the EC; the AA is responsible for audit processes. The Managing Authorities are also responsible for setting up the rules for ESIF implementation. The MA issues the orders and instructions to the Intermediate Bodies and Implementing Bodies to behave accordingly based on the mutual public treaty on responsibilities' delegation. These public treaties do not impose any penalties for public authorities as they are liable for the loss of funds when the EC eventually withdraws improperly used funds. The Intermediate Bodies and Implementing Bodies may specify or adjust the general rules and process on their field specifics. The Intermediate Bodies also provide a subject-relevant support to the Implementing Body.

*„The responsibilities between MA, The Ministries and Implementing Bodies are divided and enforced based on public treaties regulating the partnership between the bodies and stipulating the obligation to comply with the guidelines.”*

Representative

Federal office of Family and Civil Affairs (implementing body)



#### 3.1.5. High-level coordination and independence of the funds

There has not been set up any multi-fund programs in Germany with an exception of Lower Saxony where a program combining ERDF and ESF exists. The other programs are strictly mono-fund with clear separation between ESF, ERDF, EAFRD, EMFF and other similar programs. The NCO does not play any role in EAFRD and EMFF. The *Federal Ministry of Agriculture and Rural Development* acts as the Managing, Certifying and Audit Authority of both federal EAFRD and EMFF. Usually different monitoring IT systems are employed, just in case of Saxony, all the data from ESIF and other granting schemes in Saxony is collected in the same general IT system/databank (for more information about IT systems, see section 3.2 Monitoring).

There is almost no formal coordination between the programs because most of the projects do not have an integrated nature. A coordinating mechanisms vary across states. Sometimes there are joint MA (e.g. Berlin), CA (e.g. Berlin), AA (e.g. Saxony), and sometimes only informal coordination through mutual membership in monitoring committees (e.g. Saxony) or joint working groups. Usually the MAs of ERDF, ESF and European territorial cooperation, EAFRD meet and consult the measures informally.

There has not been any need for any long-term strategic project during this period so no coordination between the institutions of implementation structure and the applicants/beneficiaries of such projects has not taken in place

#### 3.1.6. Exact rules for funding

The complementarity and synergy between ESIF and other funding is assured and the competition is avoided by setting the terms for application in the right and exact way. There is a strict ban on duplicity funding in Germany. If a duplicity funding happened, it would be considered as a fraud and the criminal procedure would follow.

*„The double financing is not allowed and the ERDF-program is specified in order to prevent the competition with other programs (the national programs are checked once a year and the ERDF-program is changed if necessary). The beneficiary has to claim that he does not use any other source for financing and the projects are also checked by SAB on the spot.”*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)





There are exact rules, what kind of projects can be funded from which resource. The approach to the national and ESIF programs is similar with a few differences stipulated by the Regulation. There are guidelines and principles explaining the purpose of each program and setting clear boundaries between them (issued by topic-relevant Intermediate Body). The national programs are managed by the same authorities (Intermediate Bodies) as ESIF so the topics and conditions are coordinated. However, there is usually not any other central coordination or consultation in relation to the beneficiary provided by the implementation structure (with an exemption of SAB in Saxony which supports the beneficiaries and consults the opportunities with them). It is a beneficiary's task to coordinate the resources according to its rules in order to assure their complementarity. The beneficiaries are controlled within on spot controls and from the invoices by the Intermediate Body or audits by ESIF and national AAs. The co-financing from more sources is often provided but the non-allowed duplicity funding is very rare and it would be very complicated for the beneficiary to reach that.

*„The synergy within ESF is secured in coordination by monitoring committee to prevent double funding. There is often a synergy with ERDF or national resources when for example the crafts are supported in a purchase of the appropriate equipment from ERDF and the training of the staff using the equipment is funded from ESF.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



There is also a complementarity between the federal and regional ESF programs because some issues are better understood on the regional level (closer to the beneficiaries and target groups) and others with wider impact and higher importance are better solved on the federal level.

In some ERDF fields (e.g. the development of cities, innovations) the regions are independent and they coordinate different sources of funding by their exact rules. In some other fields (e.g. infrastructure, employment) the federal level regulates the topics and co-funds the projects by the states.

### 3.1.7. ESIF thematic concentration

The states develop their own programs and policies, decide about the topics. In some states, the partners have a very strong role (e.g. in Berlin, Mecklenburg-Vorpommern, NRW) and the topics are selected by the MAs with a support of Intermediate bodies and after consultation with them; in the other states the partnership principle plays more formal role in the programming. For example, there is a session of NCO, MA, Intermediate Bodies and the partners (such as chamber for commercial affairs, social associations). The Intermediate Bodies present their programs and projects and the other attendees can provide their ideas and approve new topics. The Implementing Bodies are usually not invited to such meetings.

*„The national process is mainly participative, there are many discussions taking place within the legal framework given by the EC.”*

Project manager

A consultancy company representing the beneficiaries



*„There is a very close contact with social and economic partners who provide consulting to the Ministry. They are even informally (beyond the obligations stipulated in the Regulation) involved into the programming process because the experience and structural knowledge of the partner is very valuable to the Ministry.”*

Representative

Federal Ministry of the Environment, Nature Conservation and Nuclear Safety (IB)







*„In the other states, it is mostly an individual administrative decision by the MA and the proposals of partners are not that much taken into consideration (e.g. Baden Württemberg, Bremen). It also depends on the partners if they take care and make proposals and comments within the monitoring committees.”*

Consultant

A consultancy company involved in the evaluation of ESIF



There is a different approach on the federal level towards ERDF and ESF. There is a federal ESF program managed by the Federal Ministry of Labour and Social Affairs (BMAS) while there is no federal ERDF program (all competencies are only on regional level).

BMW is only responsible for organizing coordination meetings / working groups of the regional representatives of **ERDF**, their agenda and moderation. The meetings take place quarterly (once a year with the presence of EC). When the funding period starts, the meetings takes place more often and also the informal the communication is more intensive (e-mails, calls) in order to discuss the draft of the Regulation, the content and changes of the Partnership Agreement, the programming, the topics (R&D, infrastructure, cities development) etc. When the content of the Partnership Agreement is discussed, the social and economic partners also participate in the process (the meetings are very big) according to the Regulation. The partners can engage in the process, present their opinions and their vote is heard.

*„The program management and also project implementation of ERDF are highly concentrated on the regional level. There is almost no coordination between the states and between regional and federal level of ERDF. NCO has a weak position without legal power to coordinate the regions.”*

Representative

Bavarian State Ministry of Economic Affairs and Media, Energy and Technology (AA)



The topics of the federal and regional **ESF** can be similar, they can deal with the same target groups (e.g. youth, women, unemployed etc.) but the structure of sub-programs has to be different in order that an OP is accepted by EC. The federal level decides the general topics and the regions come up with their additional programs applicable only to the particular region

*„There is a coordination of BMAS with regional ESF program in order to eliminate overlaps. Once there is a new idea about the program topic (before the program starts), its focus on particular projects on the federal level, it is communicated to the states in order to compare its aims and content (and vice versa communication from the states to the federal level). This avoids duplicity in funding. The federal projects have always federal impact, even if they are implemented at the local level.”*

Representative

Federal Ministry of Family Affairs, Senior Citizens, Woman and Youth (IB)



BMAS is not only responsible for managing the federal ESF but also for organizing regular coordination meetings / monitoring committees meetings where all the regional ESF MA's representatives participate. The meetings take place twice a year and the attendees discuss the Partnership Agreement, rules, their programs and other topics. The cooperation is usually more intense at the beginning of the programming period when the federal and regional level communicate on daily basis. Moreover, the representatives of the federal ESF are members of each regional ESF monitoring committee in order to coordinate the topics and prevent overlaps. Each state as well as the federal level has the same seat, the same vote and the presidency is divided between the states and federal level according to the German constitution. If a conflict between the federal and regional level appears, a difficult political dealing follows in order to reach rational solution. The principle of coherence is institutionalized in Germany.

The states are free and independent and a competition between programs might occur. Therefore, there are also geographically oriented working groups for ESF s – southern, northern, eastern and western working group – to discuss problems and crucial topics between states.





### 3.1.8. Awareness of applicants and selection of applications

The information about ESIF is announced on the specialized websites and on the websites of particular line ministries. The MAs are responsible for the general ESIF-related communication and publicity of information; the Intermediate Bodies are responsible for public relations. On the other hand, the direct communication with the beneficiaries is done by Implementing Bodies who are in direct and regular contact with them and support them in the application procedure.

If there is enough demand for the funding (bigger funding programs, bigger countries), the projects are chosen in the form of open calls for proposals by the Implementing Bodies. The other option is the direct communication and cooperation with a beneficiary (usually for smaller funding measures with less competition). The procedure of project selection in Saxony is something between the open calls and pre-selection when the projects are selected within the open calls but the application is usually placed after negotiation and cooperation with the Intermediate Body in order to ensure the project quality. In the federal ESF, the projects are chosen in open calls after consultation of the Implementing Body with the Intermediate Body. A two stage approach is usually applied – the first stage - pre-selection of projects according to their concepts is done by the Intermediate Body, the second phase, the examination and selection of the final application, is done by the Implementing Body. In all cases, the beneficiary must fulfil the terms of the program.

*„ Selecting the project is divided into two phases – the first phase - pre-choosing of projects according to their concept is done by the Ministry (sometimes supported by an external corporation that is also responsible for the guidance to the beneficiaries with regards to the content of their projects), the second phase – examination and selection of the final application is done by BAFzA. BAFzA is also responsible for the financial part of the process. The Ministry chooses the projects with the best concepts and BAFzA checks whether the chosen projects fulfil all requirements of the guidelines, especially the financial requirements. ”*

Representative

Federal office of Family and Civil Affairs (Implementing Body)



### 3.2. Monitoring

Basically, the monitoring of indicators required by the Regulation is carried out by the MAs of each OP, responsible for the reporting to the EC and submission of the annual report to the Monitoring Committees established according to the Regulation. The Intermediate Bodies monitor the progress of their sub-programs and the federal level monitors the overall implementation through the ESIF progress reports.

There is no central coordination platform in Germany aiming to support coordination and monitoring of ESIF except a centralized system to report irregularities to the EC. Majority of the OPs has own IT system. The analysed IT systems are usually not connected with IT systems of another OPs or shared within the regions nor between the institutions in a single region. Each state has also developed its own independent solution for e-cohesion on the basis of existing databases and each AA has also its own IT system. According to the respondents' opinion, there is currently no tendency to unify systems on the state and federal level because it would be too difficult and demanding due to its complexity.

*„The diverse IT systems are a better solution because each region has a different system and processes and unified IT would make the administration even more complicated.”*

Project manager

A consultancy company representing the beneficiaries





The **IT infrastructure of federal ESF program** is a good example of a complexity of various systems. First of all there is *DATES II*, where all the data of the federal ESF program progress monitoring and reporting to the EC is stored. *DATES II* does not have any e-cohesion platform for the beneficiaries and always needs other system to communicate with them and collect the data. There are more IT systems for the project administration and financial monitoring accessible by beneficiaries and used by the Intermediate and Implementing Bodies (not by MA) such as *ZUWES II* and *e2*.

*„The ZUWES II System of the Ministry of Family Affairs was needed because of the early start of their ESF-Programs in 2015. In retrospect, one solution would have been less expensive and the manpower could have been bundled up for the program development instead.”*

Representative

Federal Ministry of Family Affairs, Senior Citizens, Woman and Youth (IB)



These systems are connected into *DATES II* and automatically communicate with each other by electronic interface. Moreover, the Implementing Bodies may have additional monitoring systems for beneficiaries such as *Efa* by Federal Agency for Family and Civil Affairs (BAFzA) which are not shared with another institution of the federal ESF implementation structure.

There is a special pattern in **Saxony** where a unified IT system *Fömisax* is used for all active national and European granting programs due to the Law on granting databanks in the state of Saxony from 10<sup>th</sup> June 1999 (see more information about the law below). The data of ERDF and ESF are only small parts, the national programs play more important role. This system cannot communicate with the beneficiary directly so additional systems had to be developed. The beneficiaries have an access to the SAB communication platform (*SAB-Online / ESF-Portal*) and user portal where all the documents are available to the beneficiary and the MA (*Förderportal* for ERDF and ESF). These systems are connected to *Fömisax* and *PROSAB* (monitoring system developed and administered by SAB for its purposes, not accessible for another institution). In *Fömisax*, there is an interface (so called *FIKO Audit*) where AA can generate templates of audit reports or insert audit findings from audit of operations into the central system. Moreover, AA has its own IT system/platform only for its use.

*„The IT infrastructure in Saxony is complicated, the data has to be transferred between systems and there might occur some mistakes. It is also confusing for the beneficiary who has to use various application and administration systems.”*

Officer

Development Bank of the free state of Saxony (Implementing Body)



The best practice (from Germany, not the whole EU perspective) in IT infrastructure can be found in **Bavaria** where a multifunctional active system called *ESF Bavaria* is implemented. This system has an interface for all user (especially a platforms for the beneficiaries and for creating reports to the EU) so the data is entered and stored in only one system without any need for interaction and data transfers between various systems as in Saxony. The whole program is also evaluated and adjusted based on the data stored in the system.

*„The main advantage of ESF Bavaria is that everyone (each authority and beneficiary) uses the same system which is backed by huge databank where all the data about projects and program can be found.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



Despite the fact that the AA has an access to *ESF Bavaria* where it can create reports and find a statistical random sample of projects to be audited, the AA also has its own auditing platform where the audit documentation with audit results and plans are stored.



Only the processes required by the Regulation are monitored, only the required data is collected in the main IT system of the MA and reported by the MA to the EU. The data is not collected on the federal level and then forwarded to EC, communication with EC is assured on the level of each OP and belongs to the MA's responsibilities. The data is usually also used for internal evaluation etc. On the level of the ESF sub-programs, additional data may be collected and monitored for the purpose of national evaluation and implementation analysis of the sub-programs but this data is neither collected in the main system, nor reported to the EC.

The projects are monitored by the beneficiaries, Intermediate and Implementing Bodies (sometimes the monitoring by the Implementing Body is **outsourced to a private company** selected in public procurement). The beneficiary is responsible for issuing the reports and forwarding them to the Implementing Body. In some programs, there also may be meetings with the beneficiaries regarding the project review and progress (some problems can be discussed and solved). There is no need for enforcement of the monitoring as the beneficiary can receive the funding in all OPs after presenting all the bills and invoices and fulfilling all obligatory conditions (incl. monitoring), usually no prepayment is allowed (see below).

Generally, the IT platforms are used for supporting core functions of relevant authorities, imposed on them by the Regulation. The number and complexity of IT systems bring pros in adaption to the needs of each institution but also generates cons in a form of additional costs for its implementation. There is not much initiative in developing complex inter-connected IT systems due to running routine of all institutions and large diversity between them.

### 3.2.1. Legislative framework of the monitoring IT system's development

The *Regulation 1303/2013 Art. 122 and 125* and *Implementing Regulation 1011/2014* represent the ground legislative documents for development of the monitoring IT system.

*„The IT systems are developed according to the technical and methodological requirements stipulated in the Regulation and related guidelines. These requirements are transferred by the MA to the conditions in public procurement.“*

Representative

Federal Ministry of Labour and Social Affairs (MA)



In case of Saxony, the central granting system was developed based on a law which stipulates the obligation to set up and use a databank for all funding programs in Saxony. The law has been issued by the State Chancellery and is binding for all authorities engaged in any funding.



#### Law on granting databanks in the state of Saxony

The Saxon law on granting databanks from the Saxon Parliament regulates the general IT system *Fömisax* in regard to the data protection and its processing. Its nine paragraphs regulate following topics:

- ▶ The unified granting database, department-specific databanks,
- ▶ Tasks of the databanks,
- ▶ Admissibility of data processing,
- ▶ Data provision,
- ▶ Transfer of personal data,
- ▶ Commanded quotes;
- ▶ Effectiveness.



### 3.2.2. Administrators & users

The development and system administration varies among states. The main responsibility for the development of monitoring IT systems is dedicated to the Managing Authority. The other analysed monitoring IT systems of another institutions, which are integrated into the main system, have their own administrators, usually in role of the Intermediate Bodies, Implementing Bodies or Audit Authorities. The institutions may outsource the technical tasks to a private IT company, e.g. on the federal level or in Bavaria to *PASS consulting group* which provides customer service 24/7 and adjusts the system according to the MA's requests. In case of Saxony where the central granting system exists, the administrator is specialized *Control Agency (Leitstelle)* outside ESIF implementation structure.

*„MA is responsible for the IT systems development. The DATES development was awarded to the same IT company as in Bavarian ESF but the systems are completely independent. The developer was chosen in public procurement particularly for federal ESF. ZUWES II has been developed by BMAS but then the responsibility for its administration was handed to Intermediate Bodies. BMAS does not use ZUWES II, is only the purchaser of ZUWES II and pays the bills.”*

Representative

Federal Ministry of Labour and Social Affairs (MA)



*“E2 system was developed by BAFzA after the consultation with the Ministry of Family Affairs (IB) which has access to the system but does not really work with it. The e2 system was needed because of the early start of their ESF-Programs in 2015.”*

Representative

Federal office of Family and Civil Affairs (implementing body)



*„MA decides with Intermediate Body what should be programmed, an external IT company develops and technically administers the system according to MA's requests.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



*„The responsibility for the IT system development has the Leitstelle which outsources a specialized service provider chosen through a public procurement. There is a team for the central collecting and forwarding the requests regarding the IT system in the Leitstelle.”*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)



When the administration is done by the institutions within the implementation structure, all the other institutions, beneficiaries and EU audit institutions are in a role of individual users whose user permission may vary depending on their role. In case of Saxony, all the granting institutions (incl. the MAs) are users of the central granting databank *Fömisax*.

### 3.2.3. Interoperability of the monitoring systems

Usually most of the systems used for monitoring of OPs are interconnected with the main database of the MA (except the IT system of the AAs). Thereby, it is not necessary to insert the information into various systems manually. In case of Bavaria where only one general IT system is used, it is connected only with an accounting system.

The particular systems are usually not connected to any systems outside the ESIF implementation structure nor to any systems of another ESIF program in Germany because of the data protection rules which are very strict in Germany. The authorities have to avoid a purposeless usage of the data by another subjects.

All the discussed main databases in Germany, such as *DATES II*, *Fömisax*, *ESF Bavaria*, have direct SFC - direct connection to the European reporting system.



#### 3.2.4. Reports automatically generated

The functionality of all systems differs between OPs. Some IT systems connected to the databank can issue the report themselves, others need an extra system for preparing the report. However, all the discussed MA's IT systems, such as *DATES II*, *Fömisax*, *ESF Bavaria*, have a functionality enabling direct and automatic extraction of all the reports required by the Regulation after manual request by the MA. There is *Oracle* layer available for data mining and reporting purposes in *ESF Bavaria* and *Fömisax*, not in *DATES II*.

*„The IT system can automatically issue over 90 kinds of reports on demand of MA with cooperation of the Intermediate Body. The MA and the Intermediate Body just check the report before its submission to the EC. Bavarian ESF is evaluated and improved according to the data.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



*„ All the data is inserted into DATES II and is generally checked by MA. It is shared directly by DATES II with the European SFC system which creates the reports. The same reports can be also prepared in DATES II and downloaded manually.”*

Representative

Federal Ministry of Labour and Social Affairs (MA)



#### 3.2.5. Verification of the ownership structure

The verification of an applicant's ownership structure, debt situation / insolvency or funding history is not automated, the public registers (e.g. Commercial Register) are not interconnected with the ESIF IT systems. The information in the applications is checked manually by project coordinators of Implementing Bodies according to the MA's guidelines. No official "black list" of applicants/beneficiaries has been identified but the Implementing Bodies usually know the applicants and beneficiaries well. This is allowed by a generally smaller numbers of individual beneficiaries on the regional, as well as federal ESF level. There are more means how a responsible beneficiary is informally verified against the participation criteria.

*“There is nothing like a black list of beneficiaries, nor does the check of their history take place. The problematic beneficiaries are well known to the officers who keep a closer eye to their applications and they examine their capability of doing the project according to the guidelines more thoroughly.”*

Representative

Federal office of Family and Civil Affairs (implementing body)



*„The beneficiaries are tested on small projects first. If they can handle the small project, they can apply for a bigger one (according to the budgetary law). The CA has a book of debtors with records of the debts and their payment. This information is also recorded in the IT system. The beneficiaries get notes in the system 1 to 6 for many criteria.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)







### 3.2.6. Responsibility for correctness of data

Everybody is responsible for the data correctness, multi-eye principle applies. The MA has the formal responsibility for the correctness of the data in front of the EC. The Intermediate Bodies and the Implementing Bodies have the primary responsibility for the correctness of the data in their fields.

*“It depends on the point of view. The beneficiary is responsible in relation to the Implementing Body, the Implementing body is responsible to the Intermediate Body and MA; MA is responsible in relation to the EC.”*

Representative

Federal office of Family and Civil Affairs (implementing body)



### 3.3. The Partnership Agreement

The Partnership Agreement is a document which has to cover and reflect all OPs in Germany, it consist of federal and regional parts. The OPs and Partnership Agreement in terms of their structure are discussed simultaneously because they are closely connected (the resources have to meet the needs) but the fine-tuning of OPs can take place later. The document includes a result-framework for indicators and is perceived as rather result-oriented.

Coordination of the Partnership Agreement is concentrated on the federal level with support and after discussion of the states. When the Partnership Agreement was discussed, BMAS played the coordination role of the ESF regional opinions, BMF for audit procedures and the output of their discussions was sent to BMWi which gathered opinions regarding the regional ERDF programs and is responsible for Partnership Agreement on behalf of the whole Germany in front of the EC. The most difficult period was setting up the processes and discussing documents, after the initial period is over, the programs run without problems.

The states develop their own programs and policies, decide about the indicators and development needs, the MA for the whole program and the Intermediate Bodies in their fields. The document is drafted by the MA while different stakeholders and partners are invited to add their input.

The Partnership Agreement has been modified many times during the programming period because of changes in the targeted KPIs in OPs which are set by the MAs after discussion with the Intermediate Bodies. All such changes have to be reflected in the Partnership Agreement as well. The change process is easy because the partnership properly works and there are not any discussions and difficulties.

*„The Partnership Agreement is more a formal document because it could not be anything else in such a big federal state as Germany. Anyway it always has to be changed according to the changes in OP. Changing the indicators in OPs during the period was not very difficult and the change of PA was made on the federal level also quite smoothly.”*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)



The responsibility for monitoring and evaluation of the Partnership Agreement belongs to the NCA which have the access to the general databanks of the OPs and can view the information and reports. The evaluation is outsourced to a private company through a public procurement. Nevertheless, from the above mentioned it is clear that the role of the Partnership Agreement as a tool for strategic coordination of ESIF is rather limited.





*„Every important Modification of an operational program leads to a change of the Partnership Agreement. There always must be a coherence of the OP's objectives with the objectives of the Partnership Agreement.”*

Representative

Federal Ministry of Labour and Social Affairs (MA)



### 3.4. Audit and controls

The control takes place in all levels of the implementation structure according to the Regulation. There is usually a multi-eyes principle that the project application has to be checked by more people in order the money is issued to the beneficiary so there is apparently not so much need for control after the project has been approved. Only a part of the projects and part of their expenses is randomly chosen to be audited or controlled during the regular checks.

The MA, Intermediate Bodies and Implementing Bodies conduct the management verifications and on the spot controls in framework of the first level control. The AA audits the management and control system incl. the designation and the operations by the sample control principle and the beneficiaries on the spot as well.

The MA and the Intermediate Body set-up the rules for the first level controls and Implementing Body does the on-the-spot project work (sometimes supported by the Intermediate Body). The MA controls the results of controls done by the Implementing Body.

The AA conducts the second level control of the whole system, audits the MA, Intermediate and Implementing Body and the projects which are selected randomly by an automated system with statistical base. There is no formal central coordination or cooperation what regards the audits/controls, though in some OPs there is a tendency to share control plans and results between relevant institutions (see appropriate sections below).

*“There are not any meetings or coordination with AA. BAFzA does not examine the projects when they are audited by the AA (between August and October), the institutions do not meet or join their controls. Only once happened that BAFzA's control took part only some months after the audit...”*

*Every project has to report its receipts and expenditures six times per annum. There is a random sample system for choosing the projects for on-the-spot control. Only 10% of projects in a program is examined on the spot plus those projects with a suspicion for some issues and mistakes. Such report is examined within the limits of at least 10 % of the reported expenditures. This process leads to a low error rate and is accepted by the EC and that the beneficiaries are not supposed to have problems with too many controls.”*

Representative

Federal office of Family and Civil Affairs (implementing body)



The individual Audit Authorities act independently and all of them are centrally coordinated by the Federal Ministry of Finance which represents the German audit of ESIF in front of the EC. The coordination is similar to the NCO and includes mainly setting up and moderating meetings / working groups twice a year. The AAs share best practice in joint meetings coordinated by BMF.

There is no coordination with institutions outside the ESIF implementation structure (e.g. tax office is independent and they do not check the projects, this can happen only non-intentionally).

#### 3.4.1. Sharing audit/control plans

The approach towards sharing the audit/control plans varies between programs.

In Saxony, the information about controls and audits is shared on the Saxon level between the AA, MA and Intermediate Body in order to avoid duplicity checks on beneficiary. The audit plans are issued for the present year and two years in advance and are shared with the MA by e-mail in order to coordinate



the controls. The AA decides independently what to audit according to the risk analysis (regulated in audit strategy). The MA is audited at the beginning of the programming period and each Intermediate Body and Implementing Body is to be audited within system audit at least once in the programming period if no problems are discovered. The operations are to be audited only after first level control, certification and declaration to the EC.

*„Sometimes double controls / re-checks may occur because the AA has to check the MA as well and because national administration are auditing too, both on level of the states and the national level. The beneficiary always complain about too much control and audit (no matter the state or ESIF program) but when someone asks them if they would apply again for the funding, the answer is almost always yes.”*

Consultant

Koalis (consultancy involved in the evaluation of ESIF)



*„The beneficiaries complain about too much control, MA tries to lower the burden to the beneficiaries so they put higher emphasis to the certification of the funds in the beginning of the process (before the audit takes place) but there are still too many obligatory controls required by the Regulation.”*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)



On the other hand in Bavarian ESF, the system audit of the MA, Intermediate Bodies and CA which is based on quite complex risks evaluation, is shared with the EC. The operational audit plan is based on statistical sample controls and the annual plan is not shared with anyone. The projects are chosen according to the data from the databank (only such projects can be audited which have been reported to the EC). The double control may occur but is not very usual according to the respondents.

*„The AA creates its guidelines and conducts the audit independently based on automatically generated pattern and does not share its plans with MA (only asks MA to share some information when necessary).”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



### 3.4.2. Sharing results of controls/audits

The results of controls or audits are usually shared with the institutions of the implementation structure. The Implementing Bodies share their positive findings with the MA and AA (and CA). The AA also shares information and preliminary audit findings with the MA in order to start the contradictory procedure and follow up (the Intermediate or Implementing Body is informed either directly by the AA or indirectly by the MA). Any finding is shared with beneficiary only in form of the individual decision by the Implementing Body which is also shared with the Intermediate Body and MA. Usually a central IT databank is used for sharing the findings. The best practice is not shared because the authorities are independent in their fields of power. Any preventive or supportive activities towards the beneficiaries are usually conducted only by the Intermediate Body and MA.

*„BAFzA carries out the first level control (Ministry of Family Affairs never goes on the spot) and reports to the Ministry on a monthly basis and annually issues a summary report for the Ministry. Every reported expense that is cut by BAFzA is documented in monitoring system (e2). In case the expense has already been reported to the EC, the examination of the irregular cost and the cut has to be reported in the so called Prüfmodul within DATES II. In that way information is shared with the MA, AA, Intermediate Body and other institutions of the implementation structure.”*

Representative

Federal office of Family and Civil Affairs (implementing body)





### 3.4.3. Impact on beneficiaries

The only binding conclusion for the beneficiary is the individual decision (*Bescheid*) issued by an Implementing Body which is also responsible for its enforcement. Therefore, the findings of 1st level controls done by the Implementing Bodies are directly fully binding.

The audit statements and other control conclusions have more a recommendation function and are not binding to the beneficiary without further decision made by the Implementing Body. If there is a finding in audit revealing any issue, the contradictory procedure with the MA follows. The MA rarely has a different opinion than the AA (e.g. because of some mistakes, not understanding the context or different interpretation of terms). According to the result of the contradictory procedure, the conclusion is handed to the Implementing Body. There is not much follow-up on the audit finding by the AA after hand-over to the Implementing Body, what the AA can do is to control in an IT system whether the money has been recovered.

*„The audit statement is not binding to the beneficiaries but is reported to EC, because it is the base for the acceptance of the accounts.“*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (AA)



### 3.4.4. Irregularities

According to the administration law, the money which was wrongly provided, is to be collected back but the mistakes in national funding are not reported to any institution like OLAF. The money is automatically recovered to the account of the relevant paying authority based on the national law.

An irregularity may be discovered by any institution of the implementation structure during audit or controls but they are avoided by the rule that they may occur only after final cost certification when the project is over (the following payment is usually just corrected by the previous incorrectly paid amount).

The Implementing Body which issued the previous granting decision is an authority responsible for enforcing the consequences of mistakes following the national law and irregularities following the European law. It issues another administration decision according to the national administrative procedural law, national budgetary law and the Regulation. Such decision may withdraw the previous granting decision (in the usual case when the funds have not been forwarded to the beneficiary) or force the funds recovery (in the rare cases when the money was awarded in advance). The Implementing Body only informs the Intermediate Body and MA before the money is recovered but does not need its permission. The MA intervenes only in extreme cases to enforce the decision. The CA monitors the collecting of the funds. With respect to the exemption of prepayments is the European Regulation safer. The irregularities occur less often because they are connected to the results of a final control and final certification of costs; not each mistake must be an irregularity in German ESIF.

*„Irregularities are codified only in the EU Regulations (German law recognizes only the crime of fraud). Misuse of funds is handled according to standard administrative or penal acts.“*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



*„The irregularities are treated the same way as national mistakes (only the reporting obligation is additional).“*

Representative

Federal office of Family and Civil Affairs (implementing body)



There is a universal irregularity management system for declaring irregularities to the EC managed by the federal institutions. The qualified irregularities are transferred over the AA to BMF and BMF reports it in an irregularity report to the OLAF. The MA report all irregularities also to the CA and the CA reports it to the EC as part of payment application or accounting procedure.



If the beneficiary fails to fulfil the obligations imposed by the administrative decision, these obligations are enforced by the authority that issued the administrative decision (i.e. the implementing body) in accordance with the federal law on the enforcement of administrative decisions. In the enforcement of the decision, the provisions of the Tax Code (i.e. possible execution of mobile and immobile property) are applied in matters of effective enforcement.

Pursuant to Section 3 of the Act on the Execution of Administrative Decisions, the execution of an administrative decision imposing a financial obligation has a prerequisite of:

- ▶ Notification of over-endowment,
- ▶ Maturity of the duty,
- ▶ The deadline of one week has elapsed since the notice of performance or one week after the due date.

Together with the due amount, interest at the rate of 5% above the basic interest rate is also collected annually (Section 49a of the Code of Administrative Procedure).

#### 3.4.5. Final decision

Despite the fact that the institutions of the implementation structure are in close contact and always try to find an agreement, in very rare cases they can have different opinions. The binding or nonbinding nature of decisions and statements of the institutions and the procedure how to deal with disagreements is not regulated specifically for ESIF (except reporting obligation towards the EC) but it relies on the national administrative law.

When the MA (or Intermediate Body) have a different opinion than the AA (e.g. because of some mistake, not understanding the context or different interpretation of terms); they start a contradictory procedure. If the contradictory procedure results in persistent different opinions of involved institutions, the reasons would be submitted in the final audit decision to the EC. If the MA/IB do not follow the AA's opinion, the final audit report being sent to the EC may include a respective remark. The audit findings have only a recommendatory function, is not binding to the authorities though is normally accepted.

*„Audit Authority's finding is normally to be accepted. However, if the Intermediate Body (Federal Ministry of Family Affairs) as an exception does not accept the audit finding because it is too strict on one hand but in compliance with the Regulation, the ESF money can be recovered but the project will be funded from the national funding which does not have such a strict rule.”*

Representative

Federal Ministry of Family Affairs, Senior Citizens, Woman and Youth (IB)



The opinion of the MA is usually to be accepted by the Intermediate Body and Implementing Body because the MA gives them the direction to behave within given space. However if the MA or Intermediate Body do not agree with the Implementing Body, the Implementing Body may examine the project again or insist on its decision. The findings from on-the-spot checks are taken into account by the AA.

Another institutions outside the implementation structure are the Federal and State Courts of Auditors. Their findings are not binding and have a form of political recommendation which cannot be enforced but will be passed to the government and mentioned in Parliament. Its opinion is respected (it would be difficult not to). The real influence of the Court of Auditors on ESIF projects does not seem to be significant as the cases when ESIF projects would be subject to such audit are not very frequent.



*„The Bavarian Court of auditors has its own (random) controls based on different national legal basis than the ESIF Regulation. Its decisions are not binding to the beneficiaries but possibly the authorities have to report it to the Parliament.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (AA)



### 3.5. Pros & Cons

#### 3.5.1. Stability and continuity

The stability and continuity of the implementation system and legislation are perceived as one of the key factors of a successful and efficient ESIF implementation in Germany. The implementation structure has not changed substantially comparing to the previous programming period. Overall, the implementation on the federal level remained consistent and the level of changes may differ among regions.

*„Only updating the administration and control system with small adjustments where necessary took part in Bavarian ERDF.”*

Representative

State Ministry of Economy Affairs, Energy and Technology



The prevailing modifications over time are usually linked with an effort for more efficiency, simplification, flexibility or concentration of competences and were caused by the new rules from the EU or by the changes and concentration of program themes and topics. The emphasis was also put on strengthening the partnership principle which means more intense involvement of social and economic partners in the monitoring committees.

There were changes in the involvement of Intermediate Bodies. The overall effort was to reduce their number and it was, for instance, achieved by three in Bavarian ESF. There were also changes in specialized departments in Ministries which get involved according to the new topics in Saxon ERDF and Federal ESF. The Federal Ministry of Environment, Nature Conservation, and Nuclear Safety became a new Intermediate Body in Federal ESF as the topic of sustainable development was integrated into education and trainings.

Moreover, there were changes regarding the e-cohesion implementation in order to comply with EU requirements and simplify the communication with a beneficiary. Especially in Bavarian ESF, the new IT system for program administration and monitoring, incl. new communication platform was developed and implemented. According to the MA, this system is an example of the best practice in IT system which enables a high level of digitization. In contrast, the other states still do not declare such a high level of digitization and IT maturity (for more details, see section 3.2 Monitoring).

Another novelty took place in Saxony where the ERDF/ESF framework directive of the Saxon State Ministry of Economic Affairs, Labour and Transport (MA of ERDF)<sup>2</sup> contributing to ESIF simplification was finally approved and came into effect. The specific European rules were incorporated and interpreted by the ESIF-specific directive into the Saxon budgetary law. The main driver for adopting a specific legislation was to avoid mistakes and problems with the implementation of ESIF. The Saxon representatives consider this directive the best practice of ESIF regulation being transparent towards beneficiaries.

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<sup>2</sup>The Saxon ESIF-specific directive regulates the form of grants provided from ESIF, applied procedure and the rights and duties of beneficiaries and specifies the role of the Implementing Body, *Development Bank of the free state of Saxony* (SAB), the relation to the Managing Authority is mentioned rather marginally. More information about its content can be found in the case study to the topic no. 4.





### 3.5.2. Reallocation in particular sectors

The change in total allocation from ERDF, ESF, and CF combined in comparison to the previous programming period 2007-2013 equals to an increase of around 13%. However, a significant reallocation between structural funds and CF took place. Also the allocation of funds between states has slightly changed.

*„Germany as a whole received for ESF about 9.4 billion Euro in the programming period 2007-2013. Due to the reduction of allocation for structural funds in Germany in general, this amount has been reduced to 7.5 billion in 2014-2020.“*

Representative

Federal Ministry of Labour and Social Affairs (MA)



Even though, no significant adjustments of the implementation structure have been recognized apart from the ones mentioned above.

### 3.5.3. Decentralization, communication and partnership

The regionalization of the ESIF implementation enables having the programs adapted to the special needs and topics important for each state and earlier and easier implementation and control mechanism than a centralized structure.

*„Regionalization of the implementation enables tailor-made programs in each state as well as synchronization of responsibility in different fields.“*

Representative

State Ministry of Economy Affairs, Energy and Technology



The federal institutions mostly only coordinate and conform different opinions and interests and represent Germany in front of the EC. The coordination of regions and the federal level operates on the principles of freedom, equality, coherence and partnership. There are formal and informal ways of communication between the involved authorities in order to minimize overlaps and duplications. The system works on the principle of reaching common conclusion and the coordinating bodies (BMW, BMAS and BMF) do not have any power to force their opinions and recommendations. Since BMW and BMF do not manage or audit any federal ESIF program themselves, they do not contribute much to the discussions apart from their moderation.

### 3.5.4. Reflection of innovative topics in the regional development strategy

The ERDF have played a significant role in the development of Saxony. They decided to use 25% of ESIF for the funding of a few extremely innovative technology / experimental projects. Such decision differentiated the final performance and development of the region and has proved to be very efficient for Saxon competitiveness comparing to the other states.

*„The approach in regional policy is competition oriented. The states compete against each other how they use the funds and how they will develop.“*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)



### 3.5.5. Clearly divided role of Intermediate and Implementing Bodies

The Managing Authorities have a general responsibility for ERDF and ESF in front of the EC and coordinate the information exchange about ERDF/ESF. The program implementation itself is factually managed by specialized Intermediate Bodies and subordinated authorities.





The distribution of competencies between the Managing Authorities, specialized Intermediate Bodies and Implementing Bodies (for detailed description of competencies see particular section below) works well and will be kept also in the next period. The Implementing Bodies usually administer both the national and European funds and the knowledge about both types of funds is concentrated in the same authority which leads to achieving better synergy and complementarity between funds. There is a single point (an Implementing body) which communicates with the beneficiary regarding the application, monitoring, evaluation, first level control, necessary corrections etc.

*„The best practice may be seen in the fact that there is only single point of contact with the beneficiary. “*

Representative

State Ministry of Economy Affairs, Energy and Technology



Some of the Implementing Bodies (e.g. in Berlin or Saxony) are supportive in assisting applicants to obtain the funding and provide them with appropriate consulting. They are very lean and straightforward in order to smoothen the application and administration procedure. They try to reduce the high administration burden already required by the Regulation and make the funds more appealing to the beneficiaries. This is mostly based on the attitude of the involved officers, rather than formal procedure.

#### 3.5.6. No prepayments and wise organization of audits and controls

Even though there is more control in the ESIF than in the national programs, the German organization of audits and control prevents extensive double controls. The mistakes are minimized by more-eyes principle when issuing a document which aims at setting legal consequences (particularly by the Implementing body) and by the reimbursement principle. Such approach leads to a very low error rate but can be demotivating for the beneficiaries with weaker financial position, which is also reflected in exceptions to this rule granted by authorities.

According to the information from Saxon authorities, the pre-funding is not allowed in any cases. In case that the applicants are entrepreneurs, they have to finance at least 20% of the project expenses from own budgets (which can be used before the ESIF funds are awarded). In case of communes or public entities, even though the projects can be fully funded from ESIF, no pre-financing takes place or any state aid or state loans are offered. If the applicant does not have enough own funds, he cannot apply for the ESIF grants.

There is an exception in federal ESF, where the beneficiary may receive funds from another federal program or federal budget when there is a project which the Intermediate body finds of high importance and it will cause additional problems to the beneficiary to use own money.

*„The pre-funding is not allowed for European programs but it is allowed in national programs. The money can be officially paid only after declaring all the invoices and receipts. However in practice, the Ministry allocates some money in advance otherwise this system would cause big issues to the beneficiaries. “*

Representative

Federal Ministry of the Environment, Nature Conservation and Nuclear Safety (IB)



There were two different types of AAs analysed. On one hand, the AAs are located in the same ministries as the Managing Authorities of ESF or ERDF in Bavaria. The respondents from Bavaria mentioned an advantage of such centralized structure in no further need for coordination and in easier communication between the MA and the AA. On the other hand, there is only one AA for all structural funds (ESF, ERDF and cross-border programs) in Saxony (State Ministry of Finance) which enable better exchange of audit-specific experience.



*„The institutions of the implementation structure make the procedure as wise as the Regulation allows.“*

Consultant

Consultancy involved in evaluation and monitoring of ESIF



### 3.5.7. Costly implementation structure and IT infrastructure

The decentralization also brings some cons especially related to the duplicity in the implementation structure and IT systems. There are at least one MA, CA and AA for each of the 47 OPs and plenty of Intermediate and Implementing Bodies. For example, there are about 20 Intermediate Bodies in ERDF structure in Saxony which indicates higher requirements for managing and controlling/audit system.

*„ When there are so many programs the implementation structure is expensive because there have to be many IT systems, many institutions, and many laws.“*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (AA)



Moreover, each OP usually has its own IT systems. As mentioned above, there is usually an IT system of the MAs for monitoring the program, an IT system for administration of the program used by Intermediate Body, an IT system used by AA and others. It means there are approx. 47 IT programs of MAs and dozens of IT system belonging to the other institutions.

Furthermore, the level of digitization varies among regions- but in most cases the digitization is not sufficient and is less advanced than by other EU programs (such as Erasmus+ or Horizon 2020). There are sometimes both files – paper and electronic when the original documents are just scanned into the system. Sometimes the use of paper form (still present in some programs) is justified by the data protection regulation because of the type of collected data.

*„There is a possibility to submit digital and paper invoices (there was a big discussion with the AA and the Court of auditors about the possibility of digital invoices). The digital option has been enabled by the law on digital signatures but it is still not that much common in the society.“*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)



Good practice in IT has been identified in Bavarian ESF program where only one IT system is used for all aspects of ESF implementation. The intentions for IT unification within Germany were on the table in the past but have been proven impossible / too demanding to implement.

*„There is also a proposal in the EU high level group for simplification to make a central EU system with the essential components because it would save billions EUR (there are almost 700 IT systems for ESF, ERDF and ELER in EU and each IT system costs about 10 mil. EUR).“*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



*„There was an attempt to make a centralized system for the whole Germany but after three years it proved to be unsuccessful because of stakeholders' different interests and no will to cooperate.“*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)





### 3.5.8. Higher administration burden compared to the national funds

Most of the respondents agreed on that the ESIF programs are more complicated than the national ones, there is a higher administration burden and bureaucracy regarding the obligatory monitoring, reporting and extensive data collection for the EC and controlling the beneficiaries.

*„All structural funds have the guidelines from both the EU and the national level which have to be obeyed. The EU guidelines require fulfilling of more conditions and more reporting than the national ones.”*

Project manager

A consultancy company representing the beneficiaries



Moreover, the EC shows a constant tendency to create new rules, institutes and specific obligations, seek new interpretations which are announced quite late to the institutions of the implementation structure and thus have to be reflected in their processes.

Germany, as well as the states (especially Bavaria), actively stand for further simplification on German but also on EU level, i.e. create working groups on simplification for the next period. For example:

- ▶ The Certifying Authority was not found a necessary part of the implementation structure (only creates more reports) according to the Bavarian ESF MA's opinion, and is usually located in the same institution as the Managing Authority in Germany;
- ▶ Calls for simplifying the audit procedure by single audit principle (audit only once a year while the Bavarian ERDF AA suggests once in a project lifetime) which will reduce the costs of control mechanism and the administration burden;
- ▶ Avoiding the audit of designation;
- ▶ Encouraging the use of financial instruments by restricting their regulation on European level;
- ▶ Redesigning simplified costs options and offering more cost deduction schemes.

*„The discussions with EC and in EU committees (not on the national level) have just started. The main attitude is the overall simplification of the system (easier programming, less regulation, more strategic/shorter PA, less reporting, single-audit principle, less administration burden). The intensive discussion according ESF implementation across Germany will start in 2019.”*

Representative

Federal Ministry of Labour and Social Affairs (MA)



Germany will seek maximal harmonization with EU legislation and the guidelines will be aligned accordingly. Some changes or concentration of topics may come into question. Also more synergies with other granting schemes may be pursued. Overall, the stability and continuity is perceived as one of the most important assets and will be maintained in the next period.

*„The tendency is to keep the constancy and consistency of rules, not to change it each seven years or within the program period.”*

Representative

Bavarian State Ministry of Labour and Social Affairs, Family and Integration (MA)



*„The programing will wait until there is a final draft of the Regulation in order to prevent the changes in the content of OPs which need agreement of many parties and are demanding to manage more times.”*

Representative

Saxon State Ministry of Economic Affairs, Labour and Transport (MA)





## 4. Project activity review

### Total number of institutions approached

▶ 41

### Total number of persons approached

▶ 59

### Total number of interviews conducted (by institution)

- ▶ Implementation structure (NCA/MA/AA/CA/PA/IB): 12.
- ▶ Academic staff: 0.
- ▶ Consulting companies: 3.
- ▶ Beneficiaries: 0.
- ▶ Local EY office: 1.

### List of studies, analyses, evaluations, and other relevant materials used

- ▶ Partnership agreement between Germany and the EC on the implementation of ESI-funds in the programming period 2014 – 2020 ([https://ec.europa.eu/info/publications/partnership-agreement-germany\\_en](https://ec.europa.eu/info/publications/partnership-agreement-germany_en)).
- ▶ Relevant federal and state operational programs.
- ▶ GEFRA. Strategic progress report 2017. 31. 8. 2017.
- ▶ BMAS. Implementation report 2014/2015. 18. 8. 2016.
- ▶ BMBF. Guidelines on grants based on expenditure.
- ▶ SMAS (Bavaria), BMAS: Guidelines on the process of handling with irregularities in ESF projects in Bavaria.
- ▶ SMWi (Saxony): Annual report on ERDF progress in Saxony 2015 and 2016.
- ▶ Metis. Ex-ante evaluation of the ERDF program in Saxony in the programming period 2014 – 2020.
- ▶ isw. Ex-ante evaluation of the micro for the ERDF program in Saxony in the programming period 2014 – 2020.
- ▶ EFRE/ESF frame directive of the Saxon State Ministry of Economic Affairs, Labour and Transport from 27. 10. 2017 <https://www.revosax.sachsen.de/vorschrift/17457/33314#vww5>.
- ▶ Federal budgetary act from 19. 8. 1969 <https://www.gesetze-im-internet.de/bho/>.
- ▶ Saxon Court of Auditors. Advisory statement on delegation of responsibilities to SAB. 2015.
- ▶ Granting manual of the state Saxony-Anhalt on ERDF and ESF. 30.6.2017.
- ▶ Public treaties on responsibilities' delegation between BMAS, IBs and Implementing Bodies.