



Case study

Topic 04: ESIF Legislation

Latvia



EUROPEAN UNION
Cohesion Fund
Operational Programme Technical Assistance



MINISTRY
OF REGIONAL
DEVELOPMENT CZ



Building a better
working world



Table of contents

List of abbreviations	2
Executive summary	3
1. Basic characteristics of the ESIF system	4
2. Introduction.....	5
3. Answers to the evaluation questions.....	5
3.1. ESIF and national legislation	5
3.1.1. Responsibilities and enforcement.....	10
3.1.2. Difference between the EU and national funding in legal basis	13
3.1.3. Tendency to modify national legislation.....	13
3.1.4. Irregularities	15
3.1.5. Differences between the ESIF and national funding with respect to irregularities	16
3.1.6. Complaints.....	17
3.1.7. Remedies.....	18
3.2. Pros & Cons	19
3.2.1. Challenges.....	20
3.3. Key factors of efficient implementation	22
3.4. Foreseen modifications	23
3.4.1. Previous modifications.....	24
4. Project activity review.....	25



List of abbreviations

AA	Audit Authority
CA	Certification Authority
CBA	Cost-Benefit Analysis
CF	Cohesion Fund
CFCA	Central Finance and Contracting Agency
EAFRD	European Agricultural Fund for Rural Development
EC	European Commission
EMFF	European Maritime and Fisheries Fund
ERDF	European Regional Development Fund
ESF	European Social Fund
ESIF	European Social and Investment Funds
EU	European Union
EUR	Euro
EY	Ernst & Young
GDPR	General Data Protection Regulation
IB	Intermediate Body
IT	Information Technology
ITI	Integrated Territorial Investment
MA	Manging Authority
NCA	National Coordination Authority
NGO	Non-Governmental Organization
OLAF	European Anti-Fraud Office (Office de Lutte Anti-Fraud)
OP	Operational Programme
PA	Paying Authority
ROP	Regional Operational Programme
YEbl	Youth Employment Initiative

Latvia

Legislation

In Latvia, the adjustments of national legislation for ESIF purposes were rather minor and focused on specific topics such as the Construction Act, Public Procurement. The complete structure of applicable legislation is as follows, 1) The ESIF Act, 2) Horizontal regulations of the Cabinet, 3) Specific regulations of the Cabinet for specific goals, 4) Methodologies and manuals issued by individual institutions. The regulations are created by individual ministries under the supervision of the Ministry of Finance, which set the minimal formal requirements.



Positive aspects

- ▶ Continuity of the legislation and sufficient involvement of all partners in its creation
- ▶ Efforts to find a reasonable level of detail
- ▶ IT system to support the drafting of legislation, making easier the creation / modification of laws and regulations

Negative aspects

- ▶ Significant complications with ITI implementation
- ▶ Large volume of documentation associated with ESIF

Key aspects of the legislation

1

Approach towards discrepancies

Very generally embedded in the ESIF Act, specifically modified by the Government Decree and further developed in the methodologies developed by the MF. The key role plays "State SSC" – Central Finance and Contracting Agency

2

Methodological environment

The Ministry of Finance publishes, as the MA, the binding guidelines for Intermediate and Implementing bodies. Line ministries as Intermediate bodies are obligatorily creating a methodology for project selection criteria and elaborate in detail the Regulations and Guidelines of the Ministry of Finance.

3

State Shared Service Center - CFCA

It issues a decision on recovery of the amount. It is possible to satisfy the claim under another project of the same beneficiary. The limit is 250 €. Different approach to public and private recipients.



EUROPEAN UNION
Cohesion Fund
Operational Programme Technical Assistance



MINISTRY
OF REGIONAL
DEVELOPMENT CZ



Building a better
working world



1. Basic characteristics of the ESIF system

Number of operational programs (OP/ROP)

3 (3/0)

Number of territorial units (NUTS1/NUTS2/NUTS3)

1/1/6

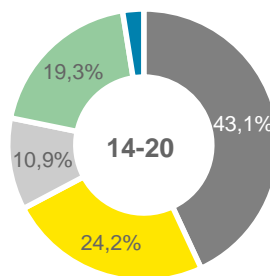
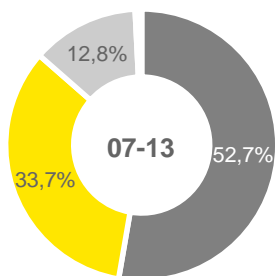
Total allocation planned (according to the programming period and according to the fund)

Total allocation
(mil. EUR)

14-20: 5 576



07-13: 4 338





2. Introduction

The case study for Latvia, topic 04 ESIF legislation is the only case study prepared for this country. Thus, for understanding of roles and responsibilities of key players and overall ESIF implementation structure please refer to a Country fact sheet – Latvia, where more details about ESIF in this particular country can be found.

The ESIF architecture in Latvia is mainly affected by the fact that only one operational programme governing all three major funds (ESF, ERDF and CF) has been established. Thus, the responsibility for legislation, rules and guidelines is concentrated mainly into the hands of the Managing Authority – the Ministry of Finance.

3. Answers to the evaluation questions

3.1. ESIF and national legislation

The overall hierarchy of national legislation governing ESIF implementation in Latvia looks as follows:

- ▶ ESIF law
- ▶ Horizontal Regulations of the Cabinet of Ministers
- ▶ Programme-/Measure-Specific Regulations of the Cabinet of Ministers
- ▶ Internal procedures, methodologies, and guidelines of individual stakeholders

Of course, the above mentioned is supplemented by the Partnership Agreement and Operational Programme – there is a single OP for Cohesion Policy and separated OPs for *EAFRD* and *EMFF*. The ESIF law, Horizontal Regulations, and Programme-/Measure-Specific Regulations are all publicly available on the Implementation Body's (*CFCA*'s) websites. A comprehensive set of individual procedures, methodologies, and guidelines is stored on the Managing Authority's (*Ministry of Finance*'s) websites.



CFCA

The *Central Finance and Contracting Agency* is the sole Implementing Body (in Latvia, also called the “Co-operation Institution”) which provides practical acquisition of the EU funds in cooperation with the Intermediate Bodies (ten line ministries and the *State Chancellery*; in Latvia, also called the “Responsible Authorities”). The *CFCA* is a state agency sub-ordinated to the *Ministry of Finance* which administrates the projects co-financed by the *ERDF*, *ESF*, and *CF*. In contrast, there is no substantial coordination/cooperation with the institutions responsible for implementation of the *EAFRD* and *EMFF*. The selected horizontal issues are rather handled case by case.

In the initial 2004-2006 programming period, the *CFCA* had been a single Implementing Body, similar to the present programming period, but in 2007-2014, it has become the Implementing Body of only six particular line ministries – being responsible exclusively for *ERDF*. In 2014-2020, the *CFCA* is a single Implementing Body for entire Cohesion Policy once again. So far, there is no discussion about further unification of the Implementing Bodies across (i) *ERDF*, *ESF*, and *CF*, and (ii) *EAFRD* and *EMFF* together.

The main reasons for the re-arrangement were the unification of procedures (a one-stop-shop for the clients – i. e., applicants and beneficiaries) and reduction of administrative burden. A lack of knowledge, or personal approach towards its clients, is not perceived as an issue by representatives of the Implementing Body, because the institution comprises the experts on various sectors and priorities in the role of individual projects managers. The overall number of employees of the agency exceeds 150 individuals.



There has been a transfer of employees from the previously separated Implementing Bodies to the *CFCA*, while specific experts from the outside of the *CFCA* are also involved on the case-by-case basis (e. g., at the stage of the selection of projects). The competences and responsibilities assigned to the *CFCA* in both 2007-2013 and 2014-2020 programming periods generally do not differ. Naturally, the extent of implemented projects (i. e., sectors which the *CFCA* is responsible for) is different as it currently covers the whole implementation, whereas it used to correspond exclusively to the sectors relevant for the six line ministries.

There are seminars, conferences, and interactive communication with beneficiaries on specific topics organised by the *CFCA*. Once there is a new call for proposals, a specifically tailored seminar takes place where rules are explained and questions are answered (the answers are further made publicly available on the *CFCA*'s websites).

The ESIF law is adopted by the *Parliament*, while the Regulations of the Cabinet of Ministers are adopted by the *Cabinet of Ministers*. All drafts of the laws and regulations are discussed and prepared in co-operation of the Managing Authority, Intermediate Bodies, Implementing Body, and other stakeholders relevant to the specific matter. The *CFCA* should primarily participate in the process of tuning of the documents and also develop and adopt documents (procedures) at the level of project selection and implementation.



Law on the Management of the European Union Structural Funds and the Cohesion Fund for the 2014-2020 Programming Period

This 17-page-long document is divided into six chapters:

- ▶ General provisions,
- ▶ Ensuring the implementation of European Union funds management and projects,
- ▶ Competence of the Cabinet of Ministers,
- ▶ Selection of project applications and decision on project application,
- ▶ Procedures by which Disputes over the Implementation of the European Union Fund Project are to be resolved,
- ▶ Final provisions.

The purpose of this law is to ensure effective, transparent and well-managed implementation of EU funds. The Law determines the rights and obligations of the institutions involved in the management of the European Union funds and the procedure for the decision-making, appeal and appeal of the institutions involved, as well as the conditions for the allocation of funding from the European Union funds, the amount of the state budget co-financing rate, and the conditions for the planning of super-liabilities.

The original version of the ESIF law is available at:

<https://www.cfla.gov.lv/lv/es-fondi-2014-2020/normativie-dokumenti>



Horizontal Regulations of the Cabinet of Ministers¹

The Horizontal Regulations of the Cabinet of Ministers set the rights and responsibilities for authorities within the implementation structure, and it comprises the following:

- ▶ No. 77, about procedures of the on-the-spot checks
 - *regulations for co-operation institution, Procurement Monitoring Bureau, managing authority, certifying authority, beneficiary*
- ▶ No. 87, about implementation of communication and visibility actions in EU funded projects
 - *regulations for public authorities involved in the management of the European Union funds and its beneficiaries*
- ▶ No. 108, about EU funds monitoring and evaluation
 - *regulations for institutions involved in management of the EU funds*
- ▶ No. 130, about state budget planning for EU funded projects
 - *regulations determining procedures regarding state budget (participating bodies: Cabinet of Ministers, Cooperation Authority, Treasury)*
- ▶ No. 367, about usage of the IT system of EU funds
- ▶ No. 485, about implementation of technical assistance
- ▶ No. 517, about detected irregularities and recovery of unduly paid funds in EU funds
 - *Cooperation Authority*
- ▶ No. 611, about EU Funds management and control system
 - *the system is established by managing authority, responsible institution, co-operation institution, audit authority, certification authority and the institution responsible for coordinating the horizontal principles*
- ▶ No. 714, about provision of Auditing Authority functions
 - *regulations for audit authority, managing authority, the certification authority, the responsible authority, the co-operation institution, the institution responsible for coordinating the horizontal principles, and the beneficiary*
- ▶ No. 784, about elaboration of programming documents in the programming period 2014-2020
 - *regulations for institutions involved in management of the EU funds*

The original versions of the Horizontal Cabinet Acts are available at:

<https://www.cfla.gov.lv/lv/es-fondi-2014-2020/normativie-dokumenti>

For the sake of defining a division of the envelope received by the Intermediate Bodies, they elaborates their own Regulations of the Cabinet of Ministers. According to the *Cabinet Act No. 611*, the Intermediate Bodies should elaborate also its internal procedures on monitoring of results, prevention of risks related to implementation, application of State Aid, evaluation of projects, implementation of information and communication measures etc. in order to provide implementation and monitoring of specific objectives. For instance, the selection criteria are also developed by the individual Intermediate Bodies for each support measure. Nonetheless, in the previous programming period, the selection criteria used to be a part of the Cabinet of Ministers' Regulations, but currently only the main principles are defined within the Cabinet of Ministers' Regulation while the selection criteria themselves, ex-ante assessment, and market-gap assessment are only approved by the *Monitoring Committee*. There is a methodology on selection criteria's application, prepared in co-operation of the Managing Authority and *Monitoring Committee*, which is publicly available, but not binding. There are no further specific guidance notes issued by the Intermediate Bodies in this matter – only these issued by the *European Commission* are adopted. The Q&A documents are made publicly available on the websites of individual institutions.

¹ The Cabinet of Ministers is the highest executive body of the country (analogy to the Czech government). Horizontal regulations set out the rights and responsibilities of the actors within the implementation structure.



Programme-/Measure-Specific Regulations of the Cabinet of Ministers

The full set of Programme-/Measure-Specific Regulations of the Cabinet of Ministers includes ca. 160 individual acts governing the implementation of specific support objectives and set the rights and responsibilities for authorities within the implementation structure. The regulations are prepared by the Intermediate Bodies, discussed with all kinds of stakeholders, approved by the *Cabinet of Ministers* and comprise especially the following:

- ▶ Aim and targets of the specific objective (i. e., the results that shall be achieved)
- ▶ Funding available and co-financing rates
- ▶ Activities to be supported and cost eligibility conditions
- ▶ Requirements for the project applicants and potential co-operation partners
- ▶ Implementation rules of the specific objective
- ▶ Conditions and arrangements for an application of the simplified costs
- ▶ Conditions regarding a provision of State Aid for commercial activities (in collaboration with the *Ministry of Finance*).

The original versions of the Programme-/Measure-Specific Cabinet Acts are available at:
<https://www.cfla.gov.lv/lv/es-fondi-2014-2020/normativie-dokumenti>



Methodologies, guidelines, and explanatory letters

The full set of provided methodologies, guidelines, explanatory letters etc. available comprises nearly 50 individual documents which further elaborates on the following topics:

- ▶ Eligibility of costs
- ▶ Development of regulations of the Cabinet of Ministers on the implementation of the specific support objectives
- ▶ EU funds implementation system
- ▶ Information and publicity
- ▶ Selection and evaluation of project applications
- ▶ Simplified costs
- ▶ Unit cost methodologies
- ▶ Public procurement
- ▶ On-the-spot checks of EU funds projects
- ▶ Monitoring of EU funds projects
- ▶ Irregularities and financial corrections
- ▶ Implementation of horizontal principles
- ▶ Cost increase in EU fund projects

The original versions of the complementary non-legal documents are available at:
<https://www.esfondi.lv/vadlinijas--skaidrojumi>

The volume of guidance documentation may appear to be excessive, but the Programme-/Measure-specific guidelines are linked to each individual priority axis and thus the beneficiary should deal only with a limited number of documents. This approach could be challenging for beneficiaries applying in several priority axis simultaneously, however, the need for specific rules and procedures is given by the difference of projects in different axes.

A majority of methodologies and guidelines are issued by the Managing Authority. These guidelines and methodologies are binding mostly to the Intermediate Bodies and CFCA; they are taken into account in process of setting national regulations about implementation of the specific objectives and in project administration process. The rules of the methodologies and guidelines are recommendatory to the final beneficiaries which know that institutions operate in accordance with these rules. Some examples of the guidelines issued by the Managing Authority are the following:



- ▶ Guidance on the application of financial corrections
- ▶ Evaluation of double financing risks (incl. double financing matrix)
- ▶ Guidelines for determining eligible and ineligible costs
- ▶ Guidelines regarding the simplified cost options
- ▶ Guidelines on the approach to data collection in a reaction to the GDPR regulation
- ▶ Guidelines for beneficiaries on publicity.

The selected methodologies and guidelines are being attached either to the tender regulation or individual contracts as an annex in order to become binding to project applicants / final beneficiaries. There are also specific presentations describing the best practice – these are not legally binding at all, but kind of implicitly binding in a sense that the beneficiaries should follow to get the best score and approval for their project.

„There are selected cases when norms included in Regulations of the Cabinet of Ministers differ from the ones that are in stated in the guidelines – in some cases, these exceptions are stricter than the overall norms included in the guidelines, but in other cases, it can be the opposite.”

Representative

EU Funds Affairs Department, Ministry of Finance (Managing Authority)



The Ministry of Finance, as the Managing Authority, issues horizontal guidelines on ESIF implementation. When drafting these documents, the ministry involves all Intermediate Bodies in the process. Therein, the intermediate bodies can express their opinion commenting on initial proposals and discussing the issues during the harmonisation meetings.

„Speaking about binding of procedures between individual institutions of the implementation structure – although the Intermediate Bodies are not institutionally sub-ordinated to the Managing Authority (the Ministry of Finance), they are functionally sub-ordinated with respect to ESIF, which makes it possible for the Managing Authority to assign tasks linked with ESIF to the Intermediate Bodies.”

Representative

Ministry of Justice (Intermediate Body)



The Intermediate Bodies can, in turn, issue guidelines of their own. Most often, these concern project selection criteria, evaluation methodology, and the collection of information. Such guidelines are not legally binding. Nonetheless, the project implementation agreements are directly linked to the guidelines making them *de facto* binding in practice.

Once drafted by an Intermediate Body, the project selection criteria have to be approved by the Monitoring Committee. Additionally, they are enclosed to the tender regulation in order to become binding on the project applicants. There has been a discussion whether the degree of bindingness is appropriate. At last, it was agreed that it is transparency of the preparation process which is fundamental, not the form of the document.

“The selection criteria used to be a part of the Cabinet of Ministers' Regulations, but it had been making the system unnecessarily rigid. Now, by the means of their direct provision by the Intermediate Bodies themselves (under an assumption of an approval by the Monitoring Committee) the system is more flexible and it is considerably easier to adapt to a current situation on the market.”

Representative

Entrepreneurship Competitiveness Department, Ministry of Economics (Intermediate Body)



Speaking for instance about the position of the CFCA as the sole Implementing Body, the agency is a directly sub-ordinated institution to the *Ministry of Finance* (acting as the MA), and therefore, all methodologies and guidelines produced by the ministry are binding for the CFCA in practice. Although these guidelines are not directly binding to the beneficiaries, they are usually indirectly binding to them



through a project implementation agreement. Furthermore, even if the guidelines are not annexed to any relevant agreement, the beneficiaries are aware of the fact that the CFCA follows them due to their public availability.

„To illustrate the rules produced by our ministry, as an Intermediate Body – in the current programming period 2014-2020, we have issued specific guidelines for project applicants on preparing cost-benefit analysis (CBA), for those specific objectives where CBA is required within the project selection process. The guidelines are publicly available through our websites. Further, we also elaborate an evaluation methodology, for example. The internal guidelines and methodologies are not publicly available, but they are shared and consulted with the Managing Authority. The internal procedures has been also audited by the Managing Authority and no substantial recommendations were made; actually, the results were quite outstanding.”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)



There is one mandatory methodology which has to be issued by all Intermediate Bodies and that is the methodology for applying selection criteria for project proposals. The line ministries and the *State Chancellery* are responsible for issuing the selection criteria themselves and also the corresponding methodology on how to apply them. In contrast, there are no similar guidelines on calls for proposals. There is an option to issue some other explanatory materials and methodologies; however, this possibility is not commonly used by the Intermediate Bodies. For instance, the *State Chancellery* has issued a set of guidelines concerning data collection which are binding to all beneficiaries involved in projects supervised by the *State Chancellery* under some specific objectives. Therefore, these guidelines are binding only for a limited number of beneficiaries.

„The modification in basis of definition of the selection criteria does not substantially influence CFCA. In general, if there are any issues at all, they arise either from a disunity of selection criteria' definition by individual Intermediate Bodies, or novelty of supported measures.”

Representative

Legal Aid Department, Central Finance and Contracting Agency (Implementing Body)



A certain provision of EU funds is also incorporated in the genuinely national regulations. For example, this is the case of either the *General Construction Regulation*, or *Public Procurement Law*, art. 7. The latter one states that *“If the contracting authority, from its own funds, EU policy instruments, or other foreign financial assistance and national co-financing funds, finances the execution of a contract that is not referred to in Section 6 of this Law, the procurement procedures and procedures for the application thereof, as well as persons applying these procedures, are determined by the Cabinet of Ministers.”*

3.1.1. Responsibilities and enforcement

According to the ESIF law, the *Ministry of Finance* is, as the Managing Authority, is responsible for ensuring efficient management of the implementation of the EU funds, and the development of planning documents, taking into account partnership and multilevel management principles. Concurrently, the Intermediate Bodies have the duty to participate in the development of planning documents, as they draft the Regulations of the Cabinet of Ministers. These drafts shall be in terms of specific objectives and project level (*i. e., available funding, requirements for the project applicants, requirements for the potential co-operation partners of a project, conditions for the activities to be supported, eligibility of costs, and also unilateral notice of a contract or agreement regarding project implementation and procedures for implementing a specific objective*).

Even though the Managing Authority generally develops the regulations and participates in the enforcement regarding EU funds, a specific body responsible for all of the regulation enforcement cannot be specified, as it depends on the nature of the act.



„The line ministries, as the Intermediate Bodies, elaborate the legislation, but since responsibility is still on the Managing Authority, the MA has to supervise the process of implementation of the delegated task and reconciles the legislation. Furthermore, the unit of the Ministry of Finance which is responsible to overview the State Aid issues has to verify whether those are in line with the State Aid regulations.”

Representative

European Union Funds Audit Department, Ministry of Finance (Auditing Authority)



„At the beginning of this programming period, the Ministry of Finance, as the MA, sent a letter to all Intermediate Bodies asking for taking into account the centralised set of minimum requirements for developing the Cabinet Regulations for individual specific objectives. For instance, the ministry has provided us with the main headings that should appear in the content of the regulations – headings that were important to address according to the common or fund-specific regulations, or previous experience. All Intermediate Bodies accepted and added a substance that is specific for their particular policy sector. This is a positive experience, because all the regulations are structured virtually the same, so that the beneficiaries can easily find the necessary requirements or funding available etc. despite the policy area (education, environment, health, culture etc.).”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)



In practice, the set of individual competences and responsibilities delegated to the Intermediate Bodies consists of the following (illustrated on a particular case of the *Ministry of Environmental Protection and Regional Development*):

- ▶ Elaboration of the Cabinet Regulations on the implementation of each specific objective or measure. The regulations are discussed with all kinds of stakeholders, approved by the Cabinet of Ministers and include the following:
 - ▶ Aim and targets of the specific objective (i. e., the results that shall be achieved)
 - ▶ Funding available and co-financing rates
 - ▶ Activities to be supported and cost eligibility conditions
 - ▶ Requirements for the project applicants and potential co-operation partners
 - ▶ Implementation rules of the specific objective
 - ▶ Conditions and arrangements for an application of the simplified costs
 - ▶ Conditions regarding a provision of State Aid for commercial activities (in collaboration with the Ministry of Finance).
- ▶ Amendments to national (sector-specific) policy documents – ex ante criteria (developed by the departments responsible for policy implementation)
- ▶ Elaboration of project selection criteria and evaluation methodology (an example of the CFCA's competences). The selection criteria are approved by the Monitoring Committee and added as an annex to the tender regulation, for a specific call for proposals, in order to become binding to the project applicants. For these criteria it is important to engage relevant social partners. (e.g., local municipalities as the project applicants need to consult with Latvian Association of Local and Regional Governments or Latvia's Large Cities' Association)
- ▶ Selection of project ideas in the chosen cases of restricted calls for proposals
- ▶ Creation of internal management and control system setting. E.g., at the Ministry of Environmental Protection and Regional Development there are in effect the following internal procedures:
 - ▶ HR management
 - ▶ Risk management
 - ▶ Participation in preparation of planning documents and amendments
 - ▶ Elaboration of project selection criteria / regulations on implementation of specific objectives



- ▶ On-the-spot checks
- ▶ Budget planning
- ▶ State Aid programme elaboration
- ▶ Information and publicity measures
- ▶ Monitoring of the results to be reached
- ▶ Approval of project amendments and reporting
- ▶ Usage of the IT system (incl. definition of who is allowed to enter monitoring data, who has to approve it etc. – following the so-called ‘four eyes principle’.
- ▶ Monitoring at the level of specific objectives – i. e., the implementation progress, output indicators and results, financial allocations and re-distribution of savings (if applicable), explanation of reasons for delays etc.
- ▶ Participation in elaboration of planning documents (the Operational Programme and Partnership Agreement), conducted mainly by the Ministry of Finance, through the means of analysing relevant statistical data, writing justifications for investment priorities etc.

Furthermore, the set of individual competences and responsibilities delegated to the Implementing Body, i. e., the CFCA, looks as follows:

- ▶ Project selection and all the relevant procedures (both open and restricted calls for proposals – approval of the corresponding Intermediate Body is necessary for proceeding with the call for proposals, selection of project ideas, preparation and control of the documents for implementation of projects etc.)
- ▶ Signing of contracts and agreements with the beneficiaries on implementation of projects
- ▶ Provision of payments to the beneficiaries
 - ▶ Ensuring pay-back of funding of ESIF as well as the state budget grants to beneficiaries
 - ▶ Preparing applications for payment of expenditure declaration to the EC
- ▶ Projects’ implementation monitoring and control activities
 - ▶ Examination of the procurement plans
 - ▶ Procurement pre-inspection
 - ▶ On-the-spot checks
 - ▶ Revision and approval of the contract’s changes, progress reports on project implementation, and payment requests
- ▶ Reporting on progress to the Monitoring Committee, corresponding Intermediate Body, and selected EU institutions
- ▶ Communication with the applicants and final beneficiaries (ensuring consultations)
- ▶ Participation in elaboration of relevant legislation (project selection, controls etc.)

„The CFCA is very much involved in preparation process of corresponding legislative acts. The Management Law, as well as individual Regulations of the Cabinet of Ministers, and all consequent amendments, are prepared in cooperation with other institutions of the implementation structure and other stakeholders (beneficiaries, social partners etc.).”

Representative

Legal Aid Department, Central Finance and Contracting Agency (Implementing Body)





„The contracts signed between the CFCA and final beneficiaries lay down the rules, including competences and duties of all the parties involved, and thus, the contract always serves as a key tool for implementing the legal framework of ESIF.”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)



3.1.2. Difference between the EU and national funding in legal basis

On top of the fact that there is not much national funding available and the existing contracts relate especially to the public bodies (municipalities and NGOs), the representatives of the institutions from inside of the implementation structure are not abundant in experience with national funds, and therefore, they cannot really comment on genuine differences of the legal basis of ESIF and national funding. Still, if there is a possibility of a double financing (e. g., the road reconstructions are made also with support from the national funding), it is correspondingly assessed during the project selection process and verified during the project implementation by the CFCA, MA, or AA (if the project is selected for an audit). The national legislation foresees a separation of the accounting system and obligations to ensure audit trail in order to demonstrate absence of double financing.

„The CFCA has been involved in management of different financial instruments such as EU Framework Programme on Solidarity and Management of Migration Flows, Latvian–Swiss Cooperation Programme, EEA Financial Mechanism, Norwegian Financial Mechanism, or Phare Programme. Nevertheless, an assessment of differences is outside the competence of the CFCA. Moreover, there is not much national co-financing in this sense in Latvia.”

Representative

Legal Aid Department, Central Finance and Contracting Agency (Implementing Body)



The national legislation (i.e. law on budget and financial management adopted on 24 March 1994) does not explicitly deal with provision of grants from the state budget. It deals with standard budgetary procedures (e.g. creation and adoption of state budget) and responsibilities of individual institutions for its implementation. Grants are specifically regulated only in relation to transfer of resources to the local governments².

Absence of specific regulation of grant provision in the national law can be explained by the fact, that each financing instrument (either using national or EU sources) has its own legislation. Apart from the mentioned law on the Management of the European Union Structural Funds and the Cohesion Fund for the 2014-2020 Programming Period, for example the following laws were adopted:

- ▶ Development Finance Institution Act – setting-up a financial institution – ALTUM – providing various forms of repayable support (loans, credit guarantees, venture capital, etc.).³
- ▶ The Law on the Management of the Internal Security Fund and the Asylum, Migration and Integration Fund 2014-2020 Planning Period – regulating provision of support from the European Asylum, Migration and Integration Fund.

3.1.3. Tendency to modify national legislation

Although the national legislation is being updated correspondingly to modification in EU legislation, none of the respondents assesses the practice as having propensity to always or overly modify the national legislation.

² See section 44 of the law available in English here <https://likumi.lv/ta/en/en/id/58057-on-budget-and-financial-management>.

³ More information can be found here <https://www.altum.lv/en/about-altum/what-we-are/>



Linkage to transferred international regulations

In the *Annotation of the Regulations of the Cabinet of Ministers*, there is a section reflecting on specific articles of the EU, or other international, regulations that are being transferred through the drafted regulation.

„Until now, there has been no substantial amendment to the national legislation, although it is amended as necessary, if the EC framework changes (e. g., the General data protection regulation as the latest trend).”

Representative,
EU Funds Affairs Department, Ministry of Finance (MA)



If a framework at the national level does not fully comply with the relevant EU legislation, it may be necessary to proceed in one of the following ways, depending on the particular situation:

- ▶ To adopt a new national legislation
- ▶ To amend an existing national legislation
- ▶ To re-adopt a national legislation which has been abolished
- ▶ To change the existing administrative practice.

The communication of potential amendments is organised according to a standard practice of inviting the social partners to participate in the working groups drafting the regulations and public consultations open, in the case of legal acts, for 30 days.

Regarding the main modifications of existing regulatory framework, the changes made to the most important legislation governing use of public finance due to ESIF were not excessive, as illustrated on the following examples:

- ▶ The law on budget and financial management - key modifications include:
 - ▶ Right of the Minister of Finance to reallocate the financing of unused funds from EU sources – section 9,
 - ▶ Right to use revenues from services provided by the institutions for the implementation of EU instruments – section 9,
 - ▶ Preparation of the medium term budget takes into account EU instruments– section 16,
 - ▶ Role of the state treasury as a paying authority of EU instruments – section 23,
 - ▶ Reporting in relation to improperly made expenditure (i.e. the irregularities) – section 28,
 - ▶ Involvement of budget institutions in long-term liabilities in the projects co-financed by the EU subject to the decision of the Cabinet – section 24,
 - ▶ Cabinet’s responsibility for determination of procedures to take decision regarding the suspension, restoration or revocation of assignments of budget to the recipient of EU financing instrument – section 29.
- ▶ The Fiscal discipline law⁴ - key modifications include:
 - ▶ Changes in expenditure in relation to EU instruments – section 5,
 - ▶ Increase in non-reimbursable expenditure for the implementation of the projects from EU instruments should be included in the declaration of fiscal risks – section 16.

As obvious, most of the adopted modifications are related to budgetary implications of EU funds and outlined procedures are very general, without specifying particular steps for relevant institutions. Such detail can be found in the ESIF specific law.

⁴ The law is available in English here <https://likumi.lv/ta/en/en/id/254896-fiscal-discipline-law>



Speaking about particular examples of discrepancies and their efficient handling, some of the respondents cannot recall any substantial ones which would be, in their opinion, worth mentioning; while others make references to the cases of *Horizon 2020* (public procurement limits had to be adjusted), *Youth Employment Initiative* support (exclusion of support for full-time students – in contradiction with national legislation; amendment was made by re-allocating only ESF, not YEI, funding to support full-time students), *State Aid* programmes (issues with eligibility of foreseen equipment), energy efficiency measures (national budget was at risk due to losing nine months by waiting for a response from the European Commission regarding energy efficiency of public buildings support programme), or public procurement issues (new directives were not overtaken timely – guidelines were published, awareness raised, contractors consulted in order to prevent infringements).

No substantial contradictions occurred with regards to regulatory framework for the EU funds, nor in connection to the Legal Aid Department and the European Union Structural Funds Department.

3.1.4. Irregularities

Pursuant to Cabinet Act No. 517, any irregularities are administered by the *Central Finance* and Contracting Agency (CFCA) acting as a single Implementing Body common to the whole implementation of Cohesion Policy in Latvia. If unduly paid funds are detected by any stakeholder, the CFCA always makes a final decision about the potential financial corrections and reports the case to OLAF. Final decisions about potential financial corrections are made by an expert group within the CFCA. The minor issues are directly in competence of the project managers.

According to the irregularity management process in place, an irregularity can be detected when the respective expenditures have been included in the Request for payment by the beneficiary. The CFCA performs controls of the documents and if an irregularity is detected, the respective expenditure is not paid to the beneficiary. However this does not apply for cases of 'suspected fraud' and 'fraud' cases, which must be reported even if they are detected and corrected by the MA or CA before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

A potential irregularity can be identified by the Implementing Body, Audit Authority, Certifying Authority, within any other audit, or also by a third party. As a general rule, any stakeholder who identifies a potential irregularity should forward the information to the CFCA as it is the cooperation institution having concluded an agreement with the beneficiary and having a mandate to adopt a decision on irregularity according to national legislation (Cabinet of Ministers Regulation No 517).

The funds are withheld from the request for payment, if possible. If not possible, a decision on the recovery of unduly paid funds is made by the CFCA and the beneficiary has to co-operate and repay the funds in three months from the date of the CFCA's decision (or according to a co-agreed payment schedule). Furthermore, only in the case that all beneficiary's projects are finalised, the last payment is made. Thus, if an irregularity is detected within a beneficiary's project and the beneficiary implements another one, the unduly paid funds may be withheld from the other project.

According to the ESIF law (sections 31 and 32), the disputes between the beneficiaries and CFCA referring to performance of the contract regarding project implementation, including a disbursement of granted financial resources, its continuation, or reimbursement are settled depending on the nature of the beneficiary. If the beneficiary is a natural or legal person, it is settled in the civil court. If the beneficiary is a direct or indirect administrative institution, derived public person or other state institution, the dispute is settled by the Managing Authority through the means of a final administrative decision that cannot be further appealed in court.



Legislation relevant to handling of irregularities

The following pieces of national legislation are central for handling of irregularities in Latvia:

- ▶ *Law on the Management of the European Union Structural Funds and the Cohesion Fund for the 2014-2020 Programming Period, sections 31 and 32*
- ▶ *Cabinet Act No. 517, Procedures for Reporting Irregularities Detected and Recovery of Expenditure Made Incorrectly in the European Union Structural Funds and the Cohesion Fund for the 2014-2020 Programming Period*
- ▶ *Civil Procedure Law*

Moreover, there is a guidance issued by the Ministry of Finance relevant for the topic of irregularities:

- ▶ *Guidance on the application of financial corrections, reporting of irregularities detected in the implementation of European Union funds, and recovery of ineligible expenditures in the 2014-2020 programming period*

In the case of involvement of the police, the police conducts an investigation independently while the CFCA waits for its decision. If the case is judged in court, it is again responsibility of the CFCA to represent the implementation structure, although it happens very rarely in practice. A different kind of court is involved in the cases of (i) selection process and (ii) implementation process. In addition, if a financial correction is revealed to be systemic and has to be applied to a shortcoming which occurs horizontally, the Managing Authority guides the identification process and communication with the *Cabinet of Ministers* to recover the unduly paid funds.

A dispute is discussed together by the CFCA, *Audit Authority*, and the *beneficiary*. In case no agreement is reached, the *Audit Authority* can register the case and report it to OLAF and the EC independently. However, this has barely ever happened in practice. An informal cooperation of the institutions helps in preventing such measures.

Information on irregularities are collected by the Managing Authorities on a regular basis through a management information system. Every quarter year, a meeting is held between the MA, CA, AA, Intermediate and implementing bodies to discuss irregularities identified in the past three months. Responsibility to organise such meeting is given to the Managing Authority by the Cabinet regulation no. 517.

The Intermediate Bodies are not involved in performing on-the-spot control nor participate in audits of operation; this is the responsibility of the Implementing Body (as the contracts are signed between the CFCA and beneficiaries) in cooperation with the Auditing Authority. None of the institutions is outsourcing the audit and control activities.

„The collaboration and communication of the CFCA with both MA and AA work very well, among others, due to the fact that all three institutions are a part of or sub-ordinated to the Ministry of Finance (actually, all of them reside at the same complex of buildings). An informal collaboration is a key factor here. This applies to both substantial systemic topics and any minor issues to discuss/solve. There are no significant shortcomings of such arrangement I could possibly recall.”

Representative

Legal Aid Department, Central Finance and Contracting Agency (Implementing Body)



3.1.5. Differences between the ESIF and national funding with respect to irregularities

Differences between ESIF and national funding are hard to identify. Each has its separate legal basis and regulations with a different degree of detail (also regarding irregularities). This does not mean that there are fundamental discrepancies among the different codes. As one of our respondents noted:



„There is not, and had not been, any ‘national vs. ESIF’ contradiction with respect to handling of irregularities in practice, as far as I know.”

Representative

Legal Aid Department, Central Finance and Contracting Agency (Implementing Body)



As described above, two main laws deal with public finance and budget, the *law on budget and financial management* and the *fiscal discipline law*. Neither of them deal specifically with provision of grants or describe in detail a procedure applied in case of non-compliance. A general procedure of non-compliance with the provisions is described in section 47 of the *law on budget and financial management* and allows the budget authorities (the Ministry of finance, Treasury, other ministries and central state institutions) to take the following measures:

- (1) withdraw for a period of time an authorisation to assign or deal with budgetary revenue or expenditures;
- (2) determine limitations on the use of accounts;
- (3) withdraw or suspend the assignments in order that the illegally used funds be refunded or require refunding of the illegally used funds;
- (4) submit a civil claim to a court or provide materials to competent officials for deciding on the issue of initiation of criminal proceedings;
- (5) withdraw or suspend payments.

The same paragraph also gives the Cabinet a power to determine the procedure for suspending, restoring or revoking assignments to the recipient of the EU financial support.

The *fiscal discipline law* mainly sets the basic principles in implementing the fiscal policy and then sets rules for the construction of a medium-term budgetary framework. The control over the fiscal discipline rules is dedicated to a specific Fiscal Discipline Council. The Council (and in general the fiscal discipline law) operates on the budget level and provides opinions and recommendations to the Cabinet. It does not specifically deal with the implementation of particular investments or grants.

A breach with respect to ESIF is mainly a violation at the national level; nonetheless, the requirements are generally stricter once ESIF is involved (e. g., higher level of controls). In the case of unduly paid funds, the eligible costs of the project are reduced according to the proportion of funding allocated to the project including the state budget co-financing. Yet, a national – state budget – co-financing is almost exclusively intended for the state institutions and local governments. **If any discrepancy is detected, the CFCA proceeds very similarly as it would for an ESIF case.** The process is as follows:

- ▶ If possible, the unduly paid funds are withheld from the project's request for payment.
- ▶ If not possible and the amount of unduly paid funds does not exceed EUR 250, it is not recovered.
- ▶ If not possible and the amount exceeds EUR 250, the CFCA makes a proposal of decision regarding the recovery of the unduly paid funds, and then, the Cabinet of Ministers makes the final decision on the reimbursement of expenditures from the national budget resources.

„There is not such focus on irregularities in the case of funding from the national budget, meaning that – if the State Audit Office identifies an irregularity of national funding, it is further passed on the police which conducts an investigation. In general, the State Audit Office is focusing rather on ‘three Es’: efficiency, effectiveness, and economy of the national funding.”

EY Estonia



3.1.6.Complaints

The general [Administrative Procedure Law](#) is applicable to all complaints against any public administration decision in Latvia, including national funding programmes and ESIF. Furthermore, the



[Law on Management of the European Union Structural Funds and the Cohesion Fund](#) (ESIF law) and some OP-specific procedures are applicable for Latvian ESIF implementation. This law also defines contesting and an appeal of decisions procedure.

Based on the Administrative Procedure Law, complaints can be lodged at any time during a project's implementation (the phase is not specified). By contrast, the types of procedures are further specified in the ESIF law. The phases during which the complaints can be lodged in ESIF include: the selection process, the processing of claims and the administrative procedures.

The *Administrative Procedure Law* applicable to both national programmes and ESIF specifies that the complaints shall be submitted in written form only. According to the *ESIF law*, complaints can be submitted via postal services and/or a proprietary online gateway and/or in person. Therefore, possibilities are broader for complaints about OPs.

The deadlines for both national programmes and ESIF against administrative procedures for both lodging and resolving complaints are one month. No deadlines for lodging a complaint are stated in the ESIF law, instead, they stem from the *Administrative Procedure Law*. On the other hand, the deadline for issuing an administrative act is longer in the *ESIF law* than in the *Administrative Procedure Law* (3 months).

Complaints against administrative procedure (both national programmes and ESIF) are subject to fees according to the *Administrative Procedure Law*. A fee of 30 EUR shall be paid as an application for a court case. A fee of 60 EUR shall be paid for a cross-appeal. A security charge of 15 EUR shall be paid for any ancillary complaint. An application for a new hearing over a newly discovered event pays a security fee of 15 EUR. If the application is fully or partially satisfied, the defendant (potential defendant) has to reimburse the applicant and pay their fee. On the other hand, no fees are to be paid when lodging complaints for OPs according to the *ESIF law*.

For both national programmes and ESIF the decision can be appealed to the court.

Therefore, the codification of the complaints-handling system is more developed for the ESIF programmes than for national programmes. However, some specifics (e.g. the deadlines for contesting and appeal) stem from the *Administrative Procedure Law*.

3.1.7. Remedies

In the case of complaints against administrative procedures concerning ESIF and national programmes, the complainants may claim for an "adequate compensation" (reimbursement). The remedy in the case of the *ESIF law* is a correction of the decision.

„A project applicant may contest a decision of the CFCA (an approval of a project application, approval with a condition or refusal in open or restricted project application selection, and decision to prohibit temporarily a participation in project application selection) to the Managing Authority. If the Managing Authority leaves the administrative act unvaried, the decision may be further appealed in court (depending on the legal status of the applicant) including claiming damages. Nonetheless, the procedure for reimbursement of losses incurred by the unlawful administrative acts of a state administration institution or the actual conduct of offenses is determined by the Law on Reparation of Damages Caused by State Administrative Institutions.”

Representative,
EU Funds Affairs Department, Ministry of Finance (MA)



In accordance with the *ESIF law*, Section 31: *“If a beneficiary is a natural or legal person, disputes referring to performance of a contract regarding project implementation, including disbursement of financial resources granted, continuation of disbursement or recovery thereof, shall be settled in accordance with the civil legal procedures. Documents which are drawn up and taken for performance of the activities referred to in the first sentence of this Section (for example, decisions, opinions, warnings, contract) shall not be examined in accordance with the procedures of administrative proceedings.”*



Moreover, in accordance with the *ESIF law*, Section 32: *“If any disagreement arises between beneficiary, who is a direct or indirect administrative institution, derived public person or other State institution, and Implementing Body regarding the decision to disburse granted funding, to continue to disburse or taken within the framework of the agreement or other decision, and agreement is not reached through negotiations, the beneficiary may appeal it in the Managing Authority.”*

3.2. Pros & Cons

The legislative framework of ESIF implementation is perceived as adequate without having any significant malfunctions by all respondents. The pursuit of an ideal level of detail at individual stages of legislation and non-legal documents is facilitated by a continuity and long-term stability of the system over the time. The absence of major modifications, which would require time for adaptation, is frequently emphasised as one of the key factors of an efficient ESIF implementation. The assumption of a steady and gradual development is fundamental for an effective elimination of individual flaws of the system as well as a possibility to accustom to and make the best use of the system by applicants and beneficiaries.

„The long-term stability of the system (which is observed in Latvia) is crucial and makes it easier for all stakeholders.”

Representative
Entrepreneurship Competitiveness Department, Ministry of Economics (IB)



Apart from stability the Latvian authorities also strive for compliance with EU rules and simplification, resulting in avoidance of any norms that might create unnecessary administrative burden. The system is not too rigid, nor too flexible. Possible issues, which tend to be rather minor, (e.g. extension of eligibility deadlines, technical changes in wording of indicators) are easily dealt with because of the ease with which the Regulations of the Cabinet of Ministers can be modified.

„Some of the guidelines posed towards beneficiaries are too strict and too legally binding (e. g., through their attachment to the project implementation agreements). I trust that the guidelines should be taken into account by the beneficiaries rather in a more recommendatory nature – to provide better understanding.”

Representative
European Union Structural Funds Department, State Chancellery (IB)



For instance, the interpretation of legislation, especially the Regulations of the Cabinet of Ministers, is sometimes unclear from an applicant's perspective; therefore, further guidelines are frequently demanded in order to get a clear example on how to apply the rules. The overall framework of both legal and non-legal documents is rather dense in this sense in Latvia, as clearly visible in the list of applicable rules and guidelines described above, which might be negatively perceived by the involved stakeholders.

„On the contrary, in some cases (mostly the ESF projects with rather smaller amounts and higher number of final beneficiaries), the specific regulations generate an excessive administrative burden for final beneficiaries. As the solution, we are suggesting implementation of more simplified-cost options.”

Representative
European Union Funds Audit Department, Ministry of Finance (AA)



Few particular issues faced, formerly or currently, by individual stakeholders comprise, for example, the harmonisation of procedures, ambiguous interpretation of rules, or overloading data collection. As for the first one, it seems that there is a uniform positive perception of merging the former various Implementing Bodies into a single one, the CFCA – making the process more understandable and user-



friendly for the applicants and beneficiaries. The only downside of the beneficial unification may potentially be lack of some specific experience, competence or knowledge.

As for the later one, these are rather the cases of individual shortcomings to be specifically tackled or horizontal issues arising directly from the EU-level policies and corresponding requirements.

A particular issues to resolve as mentioned by the respondents were for example:

- ▶ an insufficient accumulation of information about the provided State Aid support for the final beneficiary – a common database is to be developed,
- ▶ too detailed collection of data and mandatory trainings that participants try to avoid in case of sub-programmes managed by the Ministry of Justice,
- ▶ overly strict mid-term evaluation – encouraging rushing and formal fulfilment of the criteria. More target-/result-oriented approach would be welcome.

„There are complaints about regulation of deinstitutionalization measure (specific objective No. 9.2.2.1 which is implemented with the aim to increase the quality and availability of alternative social services at home and family environment instead of institutional care for persons with disabilities and children). A lot of stakeholders are involved – five final beneficiaries and 115 partners (municipalities that are social service’s providers) – therefore, the sectoral rules and regulations are often interpreted differently and various practice exists regarding provision of community-based social services.”

Expert

EU Structural Funds Department, Ministry of Welfare (Intermediate Body)



Finally, respondents complained that the ESIF law stipulates main functions that the stakeholders have to carry out, however, neither the law, nor the Cabinet Regulations provide tools on how to ensure proper monitoring and achievement of results. Consequently, the individual Intermediate Bodies have different approaches to monitoring - some might go straight to the beneficiaries and meet them, while others communicate more with the CFCA which later on deals with the beneficiaries.

3.2.1. Challenges

The central challenge to be tackled for the 2014-2020 programming period had been further optimisation of the institutional system, prevention of functions overlapping, and unification of standards and procedures. Nonetheless, as it was confirmed by several respondents, everybody tries to follow the system, and the system works without any substantial issues.

„We would not say that the system had been malfunctioning in previous programming period, it was just heavy/difficult to supervise and unnecessarily expensive (due to the number of institutions and civil servants involved).”

Representative

European Union Funds Audit Department, Ministry of Finance (AA)



Most of the issues have been resolved by the merger of individual Implementing Bodies to the CFCA in the current programming period, thanks to which the beneficiaries can now contact and cooperate with the CFCA, which applies centralised and stream-lined procedures to all processes (project selection, contracting, on-the-spot-checks, payments etc.).

Another improvements contributing to the planned unification and optimization include the issuance of guidelines by the Managing Authority, issuance of the guidelines on development of the Cabinet Acts, transfer of selection criteria determination outside of the Cabinet Acts and the assignment of control activities to the CFCA.



„In the previous programming period, we had a monitoring and control system of EU funds with eight Intermediate Bodies and six Implementing Bodies. The main shortage of the system was a different approach applied by each Implementing Body causing the final beneficiary to be treated differently (a different approach during controls, lack of clear distinction of responsibility, different approach and time limit for evaluation of payment claims, different understanding and application of procedure, or different level of qualification). Therefore, in this programming period, the institutional system has changed so that only one Implementing Body is in operation as the ‘one-stop-agency’.”

Representative,
EU Funds Affairs Department, Ministry of Finance (Managing Authority)



Other challenge mentioned is a proper observance of the vibrant public procurement and tenders legislation causing an uncertainty and lack of guidance on the public procurement process. Respondents mention that clear procurement guidelines are of the utmost importance as an incorrect application has potentially a huge impact and is costly. Nonetheless, they appreciate that the procedures are still defined and set better than it used to be in the previous programming period or 2007-2013, especially with respect to big tenders.

Further challenges include timely designation of individual bodies in order to avoid any delay in the outset of implementation. A proposed exemption of the management and control system's verification is welcome (for more information on this, see description of foreseen modifications).

„There has been a delay of half a year due to slow process of selecting and designating Implementing Body for financial instruments.”

Representative
Entrepreneurship Competitiveness Department, Ministry of Economics (Intermediate Body)



Finally, it seems that an effective implementation of the *Integrated Territorial Investment* (ITI) has been one of the major challenges for Latvia as a small Member State. The *Ministry of Finance* has a direct agreement with nine large cities on delegation of project selection to the cities themselves. In Latvia, there are nine ITIs consisting of seven specific objectives from five different priority axes.

In comparison to other programmes, the implementation of ITI programmes (and selection of projects by the municipalities) has started about a year later. The nine large cities are the final beneficiaries at the same as being responsible for the selection of projects under ITI. The selection process is problematic and burdensome for the cities, but a delegation of the responsibility to the CFCA, for instance, was not possible due to the EU Regulation, although it was even discussed with the European Commission.

„This is a new experience for the cities and a long list of procedures had to be elaborated and approved before the selection of projects could be started.”

Representative
Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)



Furthermore, the particular shortcomings of the present ITI implementation has been listed as follows:

- ▶ Lack of flexibility during implementation due to troublesome amendments of the Operational Programme arising from the necessity to stick to the ex-ante selected specific objectives
- ▶ Additional administrative burden generated by the evaluation of projects on top of the selection of project ideas
- ▶ Time-consuming nature of the corresponding procedures – for instance, the elaboration of integrated programmes, selection of projects, verifications etc.



3.3. Key factors of efficient implementation

To summarise the main key factors which, at the same, spread through most of the topics of this case study and are explicitly emphasised by individual respondents, the following should be enumerated:

- ▶ Timely drafting of documents and designation of actors
- ▶ Involvement of stakeholders
- ▶ Stability and predictability of the system
- ▶ Partial flexibility of the system
- ▶ Administrative capacity and awareness of the applicants/beneficiaries.

Among others, a timely drafting and implementation of the national legislation is a key factor which requires human capital and knowledge (maintained especially by the Intermediate Bodies responsible for preparation of Cabinet Acts).

Another key aspect contributing to the efficient implementation are good management skills including involving the stakeholders that would support the process instead of contradicting and slowing it down. Certainly, there is always an open discussion about the appropriate level of stakeholders' involvement. The Latvian implementation structure invites the representatives of NGOs, trade unions, and other associations to almost every single working group. Among the most pronounced are the Employers' Confederation of Latvia, Latvian Chamber of Commerce and Industry, and Free Trade Union Confederation of Latvia. Furthermore, there are specific working groups where specific groups of stakeholders are invited. In spite of this, there are always complaints that the external stakeholders' involvement is not valued enough, or even ignored at times. On the flipside of the coin, there were instances when such involvement had demonstrably adverse effects on the process of ESIF implementation. This was caused by contradicting interests (e. g., economic development vs. protection of biodiversity) and changing opinions of participating institutions, as each stakeholder lobbies for the best conditions for him/her-self. It is always time-consuming time to explain the requirements set out at the level of EU regulations because the stakeholders always fight for better conditions, less results-orientation, and more resources.

„The early discussions and good planning can be considered as the key factors which contribute to an efficient implementation of ESIF. For instance, those ministries which have discussed their actions in advance in detail with all local actors are more successful in the implementation.”

Adviser

Latvian Association of Local and Regional Governments



As already mentioned earlier, the capability to accustom to and make the best use of the system by all relevant stakeholders (not only the applicants and final beneficiaries) is conditional on the continuity and steadiness of the system's development. The general predictability is crucial in this sense, but on the other hand, maintaining a certain level of partial flexibility is also essential in order to modify the system during the programming period accordingly to emerging needs. A single IT system used over the time also significantly contributes to stability and predictability of the system, as the stakeholders do not have to adjust to any resolute changes.

On the other hand, it is also fundamental to maintain some partial flexibility next to the stability – especially the one to design and adjust support measures throughout the programming period.

„In Latvia, a specific knowledge and historical memory have been developed, because many young people who joined the EU implementation team at the beginning of the 2007-2013 period are still there and have experience of already two programming periods.”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)





Lastly, one of the factors of efficient implementation of EU funded projects mentioned by the respondents is an adequate administrative capacity, knowledge, and skills of the applicants and beneficiaries.

3.4. Foreseen modifications

There has been a request from the *Public Expenditure and Audit Committee* of the *Parliament* addressed to the *Ministry of Finance* to prepare an action plan on stabilising the public investment flows until 2025 due to the expected reduction in the EU funds' allocation for 2021+. So far, the ministry has replied to the committee by preparation of a scenario analysis. The ministry argues that the drop in financial flows from the EU funds will be rather negligible until 2023, followed by a small drop in 2024 and 2025, and observing a more significant drop only in 2025+. The prediction assumes that the financial flows from the current programming period are going to continue to inflow until 2023, and thus, offsetting, to a certain extent, the initial foreseen drop in 2021+.

All respondents state uniformly that, as of September 2018, no public discussion, nor a discussion they are involved in has been launched, yet. There are few partial modifications that might be foreseen or are preferred by the given respondents, but it is widely expected that no significant modifications of the implementation structure will be introduced. First, a stability and continuity of the system is emphasised in Latvia in order to capitalise on stakeholders being accustomed to the whole arrangement. Second, the representatives of the Managing Authority would like to take advantage of the proposed regulation stating that the Member States will not have to verify their existing management and control systems all over again for the new period, if it does not change. Overall, CFCA wants to further move towards simplification and diminishing of administrative burden for the beneficiaries.

„Hopefully, the implementation structure in Latvia will be the same or only slightly modified with an exception of the ITI implementation – large cities do not want to perform the function of selection of projects anymore, because it is a huge administrative burden for them.”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)



„Our Intermediate Body cannot agree with the European Commission's proposal about the reduction of the eligibility period by one year (transition from N+3 to N+2 rule). We believe that this new approach may have a negative impact on the long-term sustainability of investments, and in the event of significant changes, poses a risk for the timely use of funds. Therefore, it is very important to apply N+3 principle at least for first two years of the programming period.”

Senior Expert

EU Structural Funds Department, Ministry of Welfare (Intermediate Body)





3.4.1. Previous modifications

Whereas the monitoring and achievement of indicators and goals are, currently, the responsibility of the Intermediate Bodies, they also used to share the responsibility of conducting the independent checks with the individual Implementing Bodies, in the previous period. According to the concentration of the responsibility to the CFCA, it has absorbed as many former employees of the other Implementing Bodies as possible in order to maintain the knowledge and competences. The transfer of employees has been handled rather case by case. Naturally, not all of the management positions could be absorbed, but most of the expert positions has been.

„Although there had been a resistance from the side of the Intermediate Bodies and the individual Implementing Bodies initially, the Intermediate Bodies now admire the unification due to the administrative savings and provision of better services to beneficiaries.”

Representative

Investment Policy Department, Ministry of Environmental Protection and Regional Development (IB)





4. Project activity review

Total number of institutions approached

- ▶ 22

Total number of persons approached

- ▶ 55

Total number of interviews conducted (by institution)

- ▶ Implementation structure (NCA/MA/AA/CA/PA/IB1/IB2): 8
- ▶ Academic staff: 0
- ▶ Consulting companies: 0
- ▶ Beneficiaries: 0
- ▶ Local EY office: 2

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

- ▶ Partnership agreement between Latvia and the EC on the implementation of ESI-funds in the programming period 2014 – 2020.
- ▶ Relevant operational programs.
- ▶ Law on Management of European Union Structural Funds and the Cohesion Fund for the 2014-2020 Programming Period (<https://likumi.lv/ta/en/id/267471-law-on-management-of-european-union-structural-funds-and-the-cohesion-fund-for-the-2014-2020-programming-period>).
- ▶ Procedures for Project Verifications of the European Union Structural Funds and Cohesion Fund Projects in the Programming Period 2014-2020 (<https://likumi.lv/ta/en/id/272535-procedures-for-project-verifications-of-the-european-union-structural-funds-and-cohesion-fund-projects-in-the-programming-period-2014-2020>).
- ▶ Administrative Procedure Law (<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018406.pdf>)
- ▶ European Union Structural Funds and Cohesion Fund evaluation of the efficiency of the implementation system