

European Fund for Strategic Investments (EFSI)

2015/0009(COD) - 12/03/2015 - Court of Auditors: opinion, report

Opinion No 4/2015 of the Court of Auditors concerning the proposal for a Regulation of the European Parliament and of the Council on the European Fund for Strategic Investments (EFSI) and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013.

The Court of Auditors made the following comments on the Commission's proposal.

EFSI Governance: while the proposal indicates that EIB financing and investment operations covered by the EU guarantee would carry a non-negligible financial risk and the probability of a call upon the guarantee is tangible, the EU budget majority participation in EFSI is not reflected in its governance structure.

Legislative framework: to avoid legislative loopholes, the management of EU financial instruments should be ruled by **standardised provisions**, thus promoting instruments with a multi-policy consistency.

Derogations to the Financial Regulation provisions should be duly justified. Furthermore, although the Financial Regulation represents the legal framework for implementing the EU budget and the latter would provide the majority of EFSI funds, the specific provisions of the Financial Regulation will not apply to the EU guarantee to the EIB and the guarantee fund.

While these provisions have been introduced to address a number of weaknesses concerning the use of financial instruments, no adequate explanation is provided for such exclusion. It would have been useful to know whether the Financial Regulation is considered to be an obstacle for attracting private investment. In this case, broader consequences should be drawn for other similar schemes.

Moreover, in accordance with Article 290 TFEU, **essential elements of the legislative act should remain in the hands of the legislator** and be covered in the Regulation itself. If a delegation of power to the Commission is necessary, such a delegation should be limited to non-essential elements. Its objectives, content, scope and duration should be explicitly defined in the Regulation, with a view to ensuring the necessary transparency.

Accountability by the Commission: according to the Court, several reasons for concern exist in this respect: (1) the accountability set-up seems focused, so far, on outputs rather than outcomes and impacts; (2) the Commission's proposal does not clearly state whether the Commission intends to complement the EIB reporting with its own assessment; and to what extent the Commission will include the EFSI in the annual evaluation report on the Union's finances based on the results achieved; (3) lastly, the main decision makers (the EFSI Steering Board and the EIB governing bodies) do not seem to be subject to any public accountability procedure before the budgetary authorities. To recall, the EFSI governance is built into a dual scheme. However, this choice should not undermine the Commission's full responsibility in implementing the EU budget. A diffused accountability framework would also inevitably undermine the significance of the EU budget discharge procedure.

Audit mandate of the European Court of Auditors: the Commission's proposal would limit the Court's audit rights, in that its wording seems to include only payments and recoveries under the EU guarantee and excludes the audit of the operations carried out under the EFSI, of the instruments/entities/facilities which will be set up according to the draft EFSI Regulation, such as the European Investment Advisory Hub (EIAH) and the EU Guarantee Fund, and of the management by the EIB and EIF of financing and investment operations carried out using the EU guarantee.

In addition, the Treaty on the Functioning of the European Union confers on the Court the mandate to audit the legality, regularity and sound financial management of all revenue and expenditure of the European Union.

To fulfil its mandate, the Court enjoys **unrestricted access to any document or information it considers ‘necessary to carry out its task’**, including on the premises of any natural or legal person in receipt of payments from the budget. The Court should define the extent of its audits. In this context, the Commission should ensure that all parties concerned by activities undertaken in accordance with the EFSI Regulation and the EFSI agreement are made aware of the right of the Court, to have access to all the information it needs to carry out its audits.

Financial liabilities for public finances: the proposal does not explicitly exclude contingent liabilities for the EU budget beyond the committed funds and does not set a ceiling for EIB expenses.

So that the Commission is not liable beyond the EU guarantee (funded by the EU budget) there should be a general immunity and waivers against legal claims by EFSI beneficiaries. In addition, EIB expenses incurred on behalf of EFSI should be **unconditionally capped**.

The Court stated that it is also of the utmost importance that due consideration is given to the **overall impact of EFSI on public debt and deficits** and that this is assessed according to transparent and consistent criteria.

Mid-term review/revision of the Multiannual Financial Framework (MFF): the upcoming mid-term review/revision of MFF should provide the opportunity for the Legislator to assess the progress achieved by EFSI and for taking any corrective measure needed. On this occasion the Commission should also **report** on the progress of a first set of actions adopted in December 2014 to address the regulatory environment and the removal of barriers to investment.

The Court also provided that:

- a definition of ‘risk bearing capacity’ should be given;
- the legal form of EIAH and its operational structure should be specified;
- the issue of EIB expenses and ESIF co-funding should be addressed;
- provisions on the legal status and functioning of the EU guarantee fund should also be addressed;
- evaluations should be provided by independent external partners;
- transparency and publication of information in case of agreement between the Commission and the EIB should be improved.