**ERDF Article 7 Urban Guidance – Combined EGESIF/TCUM Comments & Responses**

| **Section** | **MS Comments** | **Commission Response** |
| --- | --- | --- |
| Table of Contents | LV - Would it be possible to highlight the differences between ITI scenarios for regional, sub-regional or city level. In additon please consider the possibility to add ITI implementation scenarios as a supplement for this guidance? | Differences will be highlighted in the ITI scenarios document rather than in this guidance. |
| Background | AT - The text should clearly explain that the document only provides recommendations. But in any case already approved programmes must not be changed! Proposal: “*Without any implications to the content and arrangement in approved operational programmes, it recalls the key elements to be defined in the Operational Programmes, and provides proposals and answers to implementation questions linked to delegation to urban authorities, designing integrated strategies and monitoring and evaluating progress*.” | Aspects of the document are indeed recommendations (e.g. suggested content of the integrated urban strategy). Where this is the case it is made clear. However, other aspects of the guidance set out things which are compulsory i.e. delegation of tasks related to Article 7 Urban Authorities, IB status for Article 7 urban authorities, audit requirements etc. |
| Background | UK – insert text *'tasks relating to…*' concerning the selection of operations. This wording reflects more accurately Article 7 ERDF Regulation | Accepted. |
| Elements Covering in the Programming | UK – insert text referencing Partnership Agreement concerning principles for selection of urban areas. | Accepted |
| Elements Covering in the Programming | UK – insert text *'as they will be carrying out functions assigned to the Managing Authority under Article 125 of Regulation (EU) No 1303/2013'* in last line of paragraph on 'delegation'. | Accepted |
| Elements Covering in the Programming | UK – insert text *'under Article 96(1) of Regulation (EU) No 1303/2013'* in line concerning specific priority axis in paragraph on 'method of implementation'. | Accepted |
| Elements Covering in the Programming | SE – Guidance states that urban authorities” shall be responsible for tasks relating, at least, to the selection of operations”. However, in the next sentence it is stated that it also is clear that urban authorities shall be designated as intermediate bodies.  In our opinion it is not an obligation to designate intermediate bodies, it is a possibility but not an obligation. We propose instead **-** “It should be clear from the OP that this minimum requirement will be met.” | The text as currently formulated is ok and in line with regulations. It is an obligation to designate the urban authorities concerned as IBs as they will be carrying out functions assigned to the Managing Authority under Article 125 of Regulation (EU) No 1303/2013. |
| Elements Covering in the Programming | EL - Please clarify whether the delegation requirement could/ should cover all the involved ESI Funds (ERDF, ESF, ...) | It can cover other ESI funds but it is not a requirement. |
| Empowerment of Cities | AT - We propose to use the term “urban authorities” in line with Art. 7.4 Reg. 1301/2013. | Accepted |
| Selection of Individual Operations | CY - When the Urban Authority does not have the expertise to undertake verifications with regard to eligibility, administrative, compliance with all applicable law and the financial and operational capacity to meet the conditions for support, can these functions be delegated to another Intermediate Body with the relevant expertise under the responsibility of the Managing Authority? | Yes – text amended to reflect possible different arrangements. |
| Selection of Individual Operations | CY - Could that other Intermediate Body also sign the funding decision on behalf of the Managing Authority? | Yes. |
| Selection of Individual Operations | PL – Further clarity required on Commission understanding of minimum scope of tasks to be performed by urban authorities. | The minimum level of tasks is set out in Article 7 (4) of Regulation (EU) No 1301/2013 i.e. '*tasks relating, at least, to the selection of operations in accordance with Article 123 (6) of the Regulation (EU) No 1303/2013, or, where appropriate, in accordance with Article 123 (7) of that Regulation'.* However, as is clear from the next paragraph (beginning *'To perform tasks* …'),there is a degree of flexibility in how this can be taken forward in terms of the balance of responsibilities between MA and urban authorities. |
| Selection of Individual Operations | UK – Insert text – *'the minimum level of tasks that has to be delegated is the application of selection criteria under A125(3)(a). The delegation of additional tasks is to be determined by the Managing Authority, in consultation with the urban authority'.* | The minimum level of tasks is set out in Article 7 (4) of Regulation (EU) No 1301/2013 i.e. '*tasks relating, at least, to the selection of operations in accordance with Article 123 (6) of the Regulation (EU) No 1303/2013, or, where appropriate, in accordance with Article 123 (7) of that Regulation'.* It would not therefore be accurate to specify the minimum as Article 123 (3) (a).  However, as is clear from the next paragraph (beginning *'To perform tasks* …'),there is a degree of flexibility in how this can be taken forward in terms of the balance of responsibilities between MA and urban authorities. |
| Selection of Individual Operations | UK – It is more in line with Article 7 to state that '*The scope of delegation is determined by the Managing Authority in consultation with the urban authority' –* rather than say that it is 'agreed'. | Accepted – provided that the minimum level of tasks is respected. Text amended. |
| Selection of Individual Operations | CZ – Does the Art. 7 Sec. 4 of the Regulation (EU) No. 1301/2013 suggest that: (a) the urban authority is responsible for the selection of operations in all its aspects, OR b) is the responsibility understood in more a limited scope as a selection of the operation based on the assessment of its compliance with the Integrated Urban Strategy (Sustainable Urban Strategy) which the urban authority is responsible for?  The way of implementation proposed by the guidance is not in line with principles of simplification and reduction of administrative bureaucracy. We do not support a wide scope of tasks delegated onto the IB – ITI. The scope of tasks delegated onto the IB should be left up to the decision of MA. We promote the minimum requirement, i.e. only selection of operations to be delegated and not a full evaluation of project applications. | There is nothing in the text as currently formulated which goes beyond the minimum requirement i.e. selection of operations. The minimum level of tasks is set out in Article 7 (4) of Regulation (EU) No 1301/2013 i.e. '*tasks relating, at least, to the selection of operations in accordance with Article 123 (6) of the Regulation (EU) No 1303/2013, or, where appropriate, in accordance with Article 123 (7) of that Regulation'.*  However, as is clear from the next paragraph (beginning *'To perform tasks* …'),there is a degree of flexibility in how this can be taken forward in terms of the balance of responsibilities between MA and urban authorities. The urban authority must however assess the content of the projects and ranks them. Legal, financial, eligibility checks etc. can be carried out by the MA if necessary. |
| Selection of Individual Operations | CZ - In case the urban authority is responsible for the selection of the operation only to the extent of the assessment of a project’s compliance with the Integrated Urban Strategy (Sustainable Urban Strategy), is it still possible for the Managing Authority to exclude the operation selected by the municipality from the evaluation procedure and in the end to reject it from being funded | As stated, urban authorities should be assessing the content of the projects and ranking those they want funded. Urban Authorities should select projects within the frame of the indicative amount allocated to them. The MA should fund the project if is eligible, picked by the urban authority, in line with the integrated urban strategy and relevant OP - and within the scope of the financial allocation to the urban authority. |
| Selection of Individual Operations | CZ - If an urban authority that is responsible for the application of the selection procedures selects more operations than the total allocation available for integrated actions of the relevant Operational Programme, what is the expected role of the Managing Authority? | Urban authorities should select projects within the frame of the indicative amount allocated to their strategy. If they exceed this amount, the MA is under no obligation to fund all of the projects. |
| Selection of Individual Operations | CZ - Who is in the end responsible for the final “selection of operations”? Does the Guidance actually foresee placement of an Intermediate Body onto the municipal level meaning that MA will delegate part of its responsibility onto the local level, the IB will have to go through designation etc.? | Article 7 requires that urban authorities will be responsible for the tasks relating, at least, to the selection of operations. Those urban authorities will then have to be designated as IBs as they will be carrying out functions assigned to the Managing Authority under Article 125 of Regulation (EU) No 1303/2013.  The designation procedure for Article 7 Intermediate Bodies is set out in section 2.2.2 i.e. they are covered by the designation procedure only with respect to the functions delegated to them. |
| Selection of Individual Operations | LV – In cases were the urban authority does not have sufficient expertise, we would like understand whether in this case it is possible to delegate the selection of operations to other national authority, for example, an association and not to urban authority – that could possibly solve questions of capacity and conflict of interests. | Selection of operations must be delegated to the urban authority level. However, if the urban authority does not have the expertise to perform the more legalistic checks i.e. verifications with regard to eligibility, administrative capacity and compliance, it can limit its involvement to an assessment to the content of the operations. The more legalistic checks can then be performed by the MA, or another Intermediate Body on its behalf. |
| Selection of Individual Operations | PL - Considering suspension of process if criteria isn't being applied correctly, should in such case the MA suspend whole delegation of tasks to the IB, or should it relate only to the area, where such irregularity was found. Should such provision be reflected in the agreement between MA and IB? | Where the MA's delegation of functions to the IB (namely the urban authority) covers only the selection of operations, the MA should indeed suspend or even cancel such delegation when the MA considers that the IB has not fulfilled its obligations. This would indeed be the case if the selection criteria have not been correctly applied by the IB on systematic basis or if there is a suspicion of fraud in relation to the selection process. Of course, to avoid litigation problems with the IB, the MA should foresee in the written record of arrangements the legal framework for the suspension/cancellation of this agreement. |
|  | LU – It is not necessary for an urban authority to be designated as an IB | It is an obligation to designate the urban authorities concerned as IBs as they will be carrying out functions assigned to the Managing Authority under Article 125 of Regulation (EU) No 1303/2013. |
| Designation of cities as Intermediate Bodies | EE - Applying the procedures for designation of the managing authority set out in the Article 124 of Regulation (EU) No 1303/2013) is an excessive requirement and is not in compliance with the CPR. We agree that urban authorities can be subject to both systems audit and project audit and should be supervised by the managing authority, but do not agree that the legal basis for their designation is Article 124 of the CPR (which requires notification to the Commission and report and opinion of the independent audit body). | As follows from Annex V of the Implementing Regulation (EU) No 1011/2014, setting out the model for the opinion of an independent audit body, the work of the IAB includes the examination of the functions delegated by the MA to the IBs.  In particular, point 2.4.5 of that Annex refers that: *"where functions have been delegated by the managing authority or the certifying authority to other bodies, [the IAB needs to] describe [in the control report] the audit work done to verify that the managing and/or certifying authority have assessed the capacities of these bodies to carry out delegated tasks, that they have sufficient supervisory procedures in place over these intermediate bodies and any other relevant audit work".*  The guidance on designation sets out further details in this regard.  In addition, the guidance on Article 7 does not say that agreements with all intermediate bodies including urban authorities are a precondition for the designation of the managing authority under Article 124 CPR. Paragraph 2.2.2 intends precisely to clarify that the designation of the MA will occur regardless of whether the all IBs are identified at that time. While the Commission considers that in principle the written agreements should be in place from the start of the OP, it acknowledges the possibility of those agreements been signed at a later date, in particular when the IB is identified as such. |
| Designation of cities as Intermediate Bodies | UK – Delete *'only with respect to the functions delegated to them*' and replace with *'ensuring the definition of respective responsibilities, the verification of their capacities to carry out the delegated tasks and the existence of reporting procedures'* – as stated in Annex XIII CPR. | While the proposed text is indeed what the CPR states, the guidance intends to clarify that the scope of the IAB work on the urban authorities is limited to the functions delegated to them.  This means that the IAB, in the context of the designation, is not supposed to audit other areas of intervention of the urban authorities that are not related with the delegated functions, unless those areas affect the functions delegated by the MA. |
| Designation of cities as Intermediate Bodies | UK – Regarding the sentence, *'In this case, urban authorities will only be audited by the Audit Authority during implementation of the programme'*, is this only in relation to the process of designating the MA, or is it a wider point that urban authorities will be subject to audit only after their formalisation as intermediate bodies. If it is the former, then it needs to be clear this is within the framework of 1(ii) of annex XIII | The paragraph in question intends to clarify that the IBs which are only identified as such by the Member State/MA after the notification of the designation to the Commission will not be subject to the IAB's work under the designation process.  However, those IBs will be subject to AA's audits during the implementation of the programme.  The Member State is also responsible to ensure the monitoring of the designation, in particular when new IBs are identified after the notification of the designation. |
|  | PL -the guidance should clearly refer to the urban authorities as intermediate bodies for both ESI | It is only an obligation in regard to ERDF. As this is guidance for ERDF Article 7, we restrict ourselves to that topic. However, it is of course possible that urban authorities can be designated as intermediate bodies both for the ERDF and the ESF whenever both ESI funds support a strategy. |
| Designation of cities as Intermediate Bodies | LV - Please consider to remove this section as the Independent Audit Body need to assess the compliance of Managing and Certifying Authority with criteria set in the CPR 1303/2013 Annex XIII. In addition, the scope of the designation procedure is set in the EC guidance on Designation procedure:  *"The IAB should be able to do this by auditing the MA’s and/or the CA’s own assessment of the intermediate body combined with some additional testing at intermediate body level, possibly on a sample basis"*  Is there a need to contradict the other EC guidance that has been already agreed and finalized? | Section 2.2.2 does not introduce any new aspect in relation to what is already in the "Guidance for Member States on Designation Procedure" (EGESIF 14-0013-final of 18/12/2014). Hence, the perceived contradiction does not exist. The perception may be a result of a truncated reading of the guidance on designation, since the sentence quoted is only a part of what is described in section 1(ii) of Annex 3 of that guidance, referring to the *"framework for ensuring, in case of delegation of tasks to intermediate bodies[[1]](#footnote-1), the definition of their respective responsibilities and obligations, the verification of their capacities to carry out delegated tasks and the existence of reporting procedures".* |
| Designation of cities as Intermediate Bodies | LV – Concerning bullet point beginning 'adequate procedures…', please consider that there may be cases where the projects will start at later stage e.g. 2018, 2019 and thus the internal procedures of institutions implementing ITI projects would not be reasonable to be in place at this stage, however, the MA procedures for supervision of their delegated functions along with agreement shall be sufficient for IAB to provide its opinion. | This is a necessary part of the assurance that the Audit body needs to have. If it is intended that they will not be selecting projects until 2018 or 2019, then the urban authorities concerned should be designated as IBs closer to that date. |
| Designation of cities as Intermediate Bodies | LV – Replace 'Audit Authority' with 'Monitoring Body'. | The guidance correctly refers to the Audit Authority, which should indeed be informed by the MA of the new IBs that did not exist during the designation process but were empowered as IBs afterwards, during the implementation of the programme.  However, the comment raises an important point which is the fact that should monitor the designated bodies (i.e. MA and CA) throughout the period, under Article 124 CPR. Some additional text has therefore been added. |
| Content of Written Agreement between MAs and Urban Authorities | PL - Is it a must for the written agreement between MA and IB to include a statement that the Managing Authority verified the capacities of the intermediate body, and what form should it take? | Ideally it should be there. It reflects Annex XIII CPR. A simple statement would suffice. |
| Scope of Audit Requirements | AT - Due to Art. 127 (1) System Audits and Audit of Operations performed by the AA will be based on declared expenditure. If only “*the tasks relating to the selection of operations*” has been delegated to an Urban Authority (which is the min. requirement acc. to Art. 7 (4) Reg. 1301/2013) we do not see the necessity that the AA has to perform system audits and audits of operations at the Urban Authority. | The AA should perform the system audits (i.e. the audits on the proper functioning of the management and control system mentioned in Article 127(1) CPR) also in regard to urban authorities with delegated functions concerning selection of operations.  Those authorities are part of the management and control system on which the AA has to draw an annual audit opinion by 15 February 2016 onwards.  Moreover, the appropriate selection of operations is a key requirement of management and control systems (under Annex IV of the Delegated Regulation (EU) No 480/2014) and its classification in category 3 or 4 is considered a serious deficiency in the effective functioning of the system. Hence, it is important that the AA ensures that its system audits do not overlook the role of urban authorities in the selection of operations.  In the context of audits of operations and if the sample selected by the AA includes operations for which the urban authorities are the IBs, the AA may also need to perform work at the level of those authorities, namely to verify that that the operation was selected in accordance with the selection criteria for the operational programme, as established by Article 27(2.a) of the Delegated Regulation (EU) No 480/2014. |
| Scope of Audit Requirements | EE- Please take into account that bilateral agreements are not the only manner of establishing obligations and responsibilities, this can also be done by legal acts. | Accepted – text amended. |
| Increased Delegation to Urban Authorities – Global Grant | PL - It is up to Member State to decide on the choice in application of 123.6 or 123.7 irrespective of the scope of tasks delegated to urban authorities. At current wording the guidelines requires application of Article 123.7 if tasks delegated are broader than minimum. It is necessary to change it because there is no legal basis for this requirement. | Paragraph reworded for additional clarity. The paragraph at stake in the guidance was not intending to require the application of Article 123(7) CPR. The purpose was to draw attention to the fact that, if the Member State or the MA entrust the management of part of an operational programme to an urban authority under that provision (and in addition to the delegated function of selection of operations under Article 123(6) CPR), then this intermediate body shall provide guarantees of its solvency and competence in the domain concerned, as well as of its administrative and financial management capacity.  In the context of the designation, the IAB should verify whether the MA has set-up a "*framework for ensuring, in the event of delegation of tasks to intermediate bodies, the definition of their respective responsibilities and obligations, the verification of their capacities to carry out delegated tasks and the existence of reporting procedures".*  In the event that, at the time of the designation process, the MS/MA has entrusted to urban authorities a "global grant" in the sense of Article 123(7) CPR, then the IAB should assess if the MA's required framework covers satisfactorily the verification of whether the urban authorities provide the necessary guarantees and financial management capacity.  After the notification of the designation and during implementation of the programme, the AA should also verify, in particular in the context of system audits, whether the MA has implemented correctly the procedures that it has set-up to verify that the urban authorities concerned by Article 123(7) CPR provide the necessary guarantees and financial management capacity. |
| Conflict of Interest | AT - We are not convinced if this approach is in line with the concept of delegating the tasks relating to the selection of operations to the urban authorities – since as it is explained in the text the urban authority might be involved as a beneficiary.  Furthermore: Due to the small sized urban authorities in AT it might not be possible to prevent potential conflict of interest by proper selection of functions. We would rather ask to widen the concept/approach and kindly ask to provide good practise proposals.  LV, PL, EE, RO, EL, BE, CZ– More detail needed. | The text of section 2.2.6 has been redrafted in order to clarify the points made by MS. |
| Integrated Urban Strategies in the context of Article 7 | UK – Insert text *'The strategies should be proportionate to the amount of funding concerned'.* | Inserted under 2.3.2 – key principles. |
| Integrated Urban Strategies in the context of Article 7 | CZ - The Guidance expects existence of thematically broad Integrated Urban Strategies (IUS). Considering the national position and the phase of preparation of Integrated Urban Strategies, the Czech Republic suggests leaving the thematic scope of Integrated Urban Strategies on national MA’s. | The thematic scope of the Integrated Urban Strategies is set out in Article 7 (1) of Regulation (EU) No 1301/2013 i.e. '*the ERDF shall support, within OPs, sustainable urban development through strategies that set out integrated actions to tackle the economic, environmental, climate, demographic, and social challenges'.* As is stated in section 5.2, whilst the actions funded by ESI Funds need not concern all these elements, the wider strategy must take account of all the aspects listed above. |
| Integrated Urban Strategies in the context of Article 7 | RO – Clarification needed on requirement of integrated aspect of operations vs strategy. | There is no requirement that an individual action is 'integrated' – however, the links between different actions should be considered so that in total the interlinked actions bring about a lasting improvement in the economic, environmental, climate, social and demographic conditions of an urban area. |
| Key principles for the creation of integrated urban strategies | AT, EE, PL, RO, CZ – Clarify that this is recommended content. | Amended to reflect it is recommended content based on experience. In addition, the word 'creation' has been removed from the title to reflect the fact that strategies do not have to be newly created. |
| Key principles for the creation of integrated urban strategies | UK – Concerning sentence *'The operations in the strategy to be funded by ESI Funds must be linked to the objectives'*, are we talking about objectives of the sustainable urban development strategy or of the operational programme(s) from which it is funded. | Objectives of the OPs from which it is funded – text amended to clarify. |
| Key principles for the creation of integrated urban strategies | SK - The guidance does not clearly demonstrate the added value of the IUS. | This guidance focusses on the implementation of such strategies rather than explaining their benefit. |
| TA for the development of strategies or the amendment of existing strategies | UK, PL, RO, EL– Further clarification required. | Text amended to clarify role of TA. Creation and further amendment can be financed through TA. |
| Sustainable Urban Development supported through Financial Instruments | CZ – Concerning the last paragraph of section 5.4, we are not sure whether the obligations are in line with CPR nor with the mentioned Regulation No 651/2014. Please clarify. We think that it should be only possibility not the obligation. | Text amended to reflect fact that the obligations mentioned are necessary if FI spend is to count towards ERDF Article 7 (minimum 5%). |
| Monitoring Committee | PL - Consider rephrasing - principal reason for including representatives of ITI urban authorities into the composition of the Monitoring Committee would be the intermediary body status | IBs are mentioned as being part of composition. Specific reference is made to competent urban authorities as regulation also states this. |
| Monitoring | LV - Please indicate in what ways urban strategies should be monitored when it comes to Monitoring Committees. Should there be any specific reports on implementation of urban strategies and which institution should develop such reports? | It is recommended that the Monitoring Committees have an overview regarding the strategies they find and their general progress. However, due the varying scope of Article 7, it is the decision of the individual MC as to how it should monitor the progress of the strategies – those MCs with a small number of strategies linked to their programme may ask for individual reports and a specific discussion on an annual basis. Those MCs with multiple strategies may wish to create alternative arrangements. |
| Monitoring | SE, EL – We would like to see more information on UDN | More information will become available throughout 2015 as the UDN develops. |
| Annex I – Suggested Components of Urban Strategy | SK –We would like to see more detail on the territorial dimension and COM recommendations for methods and technics for multi-sectorial assessment of territory | As this is a guidance note to give advice on the basics of implementation, it is not the correct format for detailed recommendations on techniques for multi-sectoral assessment. However, the UDN will seek to explore such topics with urban authorities in the future. |
| Annex I – Suggested Components of Urban Strategy | BE – Make clear this section is recommended content | As stated in the title – it is 'suggested' and not compulsory. |
| Annex II – Template of Written Agreement between MA and urban authority | CY, LV, PL, GR - Please consider rephrasing the text *'no right to receive funding'* as it is unclear / confusing | Accepted – text amended to clarify. |
| Annex II – Template of Written Agreement between MA and urban authority | EL - Responsibilities/ delegated tasks of the MA, Urban Authority and Monitoring Committee need to be more clearly mentioned | Guidance includes suggested content which we feel can be adapted to most MS. It would not be beneficial to be too specific on separation of functions. |
| Annex II – Template of Written Agreement between MA and urban authority | UK – Change '*Written Agreement'* to *'Written Record of the Arrangements'* | Accepted. |
| Annex II – Template of Written Agreement between MA and urban authority | PL – Concerning point 5, it should be clarified why the *'responsibility'* for the application of the agreed selection procedures and criteria in all cases should lie with the urban authorities despite the fact that part of verifications may be done by Managing Authorities | Accepted – text amended. It is not 'responsibility ' as such, but a requirement that the urban authority actually carries out the application of the agreed selection procedures and criteria. |

1. Including the urban authorities under Article 7 of Regulation of Regulation (EU) No 1301/2013. [↑](#footnote-ref-1)