# Questions and answers on Designation of intermediate bodies and partial set-up of management and control systems

This Q&A document constitutes an annex to the "Guidance for Member States on Designation Procedure" - EGESIF_14-0013-final

This Q&A addresses questions raised by Member States concerning the following issues:

(i) lack of designation of intermediate bodies under Article 123 CPR;

(ii) partial set-up of the management and control systems; and

(iii) the impact of these two situations on the Independent Audit Body's opinion and the corresponding notification under Article 124 CPR.

1) The designation of the Intermediate Bodies (IBs) may be problematic in some cases, as the written agreements required by Article 123 (6) and (7) CPR may not yet exist at the stage of designation of the managing authority (MA) and the certifying authority (CA). In such cases, is partial designation possible?

*It is important to distinguish the designation of authorities under Article 123 CPR – which is in essence a national process – and the notification of the MA and CA under Article 124 CPR, which relates to the information provided to the Commission on the designation of these authorities.*

*It is not possible to have "partial designations". Where IBs have been designated at national level at the time of notification of the designation of the MA/CA, under the conditions described in the reply to question 4 below, then there should be written agreements between the MA/CA and with each of them, to define delegated tasks, confirming the capacity of IBs to carry out the tasks, indicating the supervision of the MA/CA, and reporting obligations of the IBs.*

*For the IBs where such written agreements do not exist, there is no designation of those IBs at national level under Article 123 (6) and (7) CPR. As a result it will not be possible to declare expenditure managed by those IBs to the Commission until the IBs are fully designated at national level.*

*The Member States may still designate them after the designation of the MA/CA notified under Article 124(1) CPR.*

*Therefore, the fact that there are IBs that have not yet been designated does not prevent the Member State from notifying the designation of the MA/CA to the Commission under Article 124 CPR.*

2) Can the Independent Audit Body (IAB) give a favourable opinion in cases where a new IB has not yet been nominated (for example, in cases of urban measures, but not only)?

*The IAB can give an unqualified opinion (ie without reservations) where a new IB (including an urban authority under Article 7 ERDF) has not yet been designated under Article 123 (6) and (7) CPR at the time of notification of the designation of the MA/CA, provided compliance with the regulatory requirements on the system set-up (namely those related with the MA or CA's supervision of IBs) is ensured.*

3) Can the IAB give a favourable opinion in cases where the MA is nominated and most IBs, but not all, and some of those IBs will be the same as in the last period?

*Same reply as for question 2. Moreover, as per Article 124(2) CPR, where the IBs not yet designated are the same as for the previous programming period, and that there is evidence, on the basis of audit work done in accordance with the relevant provisions of Regulation (EC) No 1083/2006 and Council Regulation (EC) No 1198/2006, of their effective functioning during that period, the IAB may conclude that the relevant criteria are fulfilled without carrying out additional audit work.*

4) The checklist attached to the *"Guidance for Member States on Designation Procedure"* (page 22) includes the point: *"For all IBs already known, confirm that relevant arrangements (formally recorded in writing) exist, describing the functions and tasks of the managing or certifying authorities that have been delegated to IBs."* Does the expression "IBs already known" mean that the IAB should consider that the IBs mentioned in programming documents (such as the description of the programme submitted to the Commission for adoption) have been designated?

*The IBs mentioned in programming documents (such as the description of the programme submitted to the Commission for adoption) have not necessarily been designated by the Member State in accordance with Article 123 (6) and (7) CPR. Such a mention may correspond to a forecast that in the end is not implemented. An IB is only designated under Article 123 (6) or (7) CPR when the Member State has taken a formal decision in this respect that complies with the requirements set out in these provisions, i.e. there must be an arrangement formally recorded in writing.*

*Similarly to MA/CA designation, the legal form of the designation under Article 123(6) CPR may correspond to a legislative act adopted at national level (e.g. law, decree, ministerial decision) or to any other form that the Member State considers appropriate. In any case, the document by which the Member State designates an IB should be final and adopted by the relevant national authorities by the date of the notification of the designation decision to the Commission.*

5) If there were any limitation of scope affecting the opinion of the IAB (e.g. the audit of information system is part of another audit, which is not complete at the date of audit opinion of a programme) and this limitation of scope is reflected in the opinion of the IAB, is it possible to notify the Commission of the date and form of the MA/CA designations?

*A qualified opinion (ie an audit opinion with reservations, whether or not resulting from scope limitations) by the IAB is a blocking factor for the designation, ie the Member State should not submit the notification of the designation of the MA and/or CA under Article 124 CPR in such a case*[1].

*A qualified opinion by the IAB means that this body has identified a serious non-compliance issue with one or more designation criteria set out in Annex XIII CPR relating to key requirements of the system. Such non-compliance will imply that, if no corrective measures are taken by the Member State, the management and control systems will not function properly.*

[1] The same applies if the IAB's opinion is adverse, as indicated in section 2.8 of the Commission's guidance on designation (EGESIF_14-0013-final of 18/12/2014).

6) Is it possible to notify the Commission of the date and form of the MA designations for the specific part of the programme (only for the selected priorities that where subject of the audit)?

*The notification of the MA's designation under Article 124 CPR relates to the whole programme. It is not possible to only notify a part of that designation.*

*If the question relates to the partial set-up of the management and control systems, this is a blocking factor for the designation if it corresponds to a serious non-compliance with one or more designation criteria relating to key requirements of the system. This would be the case, for example, where the procedures for management verifications or the procedures to ensure an adequate audit trail[2] are non-existent or seriously deficient.*

*In case of partial compliance with one or more designation criteria relating to key requirements of the system, the seriousness and extent of these shortcomings should be assessed by the IAB, which will decide whether a qualified opinion or an adverse opinion has to be formulated.*

7) Is it possible to notify the Commission of the date and form of the MA designations, except for the financial instruments?

*Same reply as for question 5. If it is expected to have IBs for financial instruments, see reply to question 1. However the template for system description as foreseen in Annex III of the Commission Implementing Regulation (EU) No 1011/2014 does not require a specific section for financial instruments, which therefore fall under the general description for the functions and responsibilities of MAs/CAs and their IBs.*

8) Can a Member State decide to withdraw the designation (Article 123(6) and (7) CPR) of an IB that does not meet the requirement for the designation (under Annex XIII CPR) and does not have contingency systems in place for material deficiencies?

*It is up to the Member State to decide which authorities and IBs should be designated and thus also to amend this decision:*

- *either before notification of the designation under Article 124(1) CPR, for instance, as they do not meet the designation criteria of Annex XIII CPR*
- *or after notification of the designation under Article 124(1) CPR if they do no longer meet the designation criteria of Annex XIII CPR, in which case the provisions of Article 124(5) CPR apply.*

*Therefore, a Member State may decide not to maintain the designation of an IB by withdrawing the written arrangements which apply to that IB.*

*The implication of a withdrawal of the arrangements is that it will not be possible to declare expenditure managed by that IB.*

[2] In particular, the audit trail for payment applications.

9) If the set-up of the IT systems in the Member State is not fully in line with the regulatory requirements for those systems and/or they are not operational, does the IAB need to disclose a qualified opinion on the designation?

*The IAB needs to exercise professional judgment on whether the aspect of the IT system which is not operational at the time of designation is material. The main criterion is whether the IT system allows already at the stage of designation for a sufficient audit trail for any payment application accompanying the notification.*

*In any case, the set-up/description of the IT system needs to comply with the regulatory requirements, regardless of any possible gaps/deficiencies related with "readiness to function" of those systems.*

*If the IT system is not operational at designation stage (concretely, where such a system does not enable the drawing-up of interim payment applications to be submitted to the Commission and the underlying audit trail,) and no contingency systems exist until the underlying material problems are fixed, an unqualified IAB opinion on designation would not be acceptable (designation should not be considered compliant with the relevant provisions). The Member State should solve the IT problems before obtaining an unqualified opinion from the IAB.*

*For other less urgent situations not linked to the above-mentioned issue, an emphasis of matter accompanying an IAB's unqualified opinion (and without impact on the designation) would be sufficient provided that the Member State authorities commit themselves to an action plan, identifying the actions to be taken in order to have a fully compliant and operational IT system on time for the relevant regulatory reporting deadlines.*

*In this last case, IT non-compliance issues detected at the designation stage need to be followed-up by the audit authority in its system audits. The Commission will take that follow-up into account in its own audits and assessment of the effective functioning of the relevant key requirements.*