

UFFIĊĊJU TAD-DEPUTAT
PRIM MINISTRU
MINISTERU GHALL-AFFARIJET EWROPEJ

SEGRETARJAT PARLAMENTARI GHALL-
PRESIDENZA UE 2017 U GHALL-FONDI
EWROPEJ

Id-Divizjoni ghall-Fondi u Programmi



MALTA

OFFICE OF THE DEPUTY
PRIME MINISTER
MINISTRY FOR EUROPEAN AFFAIRS

PARLIAMENTARY SECRETARIAT FOR THE EU
PRESIDENCY 2017 AND EU FUNDS

Funds and Programmes Division

RA Circular 03/2015

Date: 27th February 2015

From: Head of the Responsible Authority

To: Project Leaders, External Borders Fund

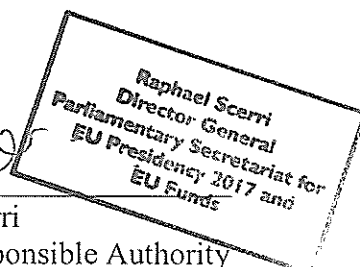
Following a report issued by the Court of Auditors regarding findings detected in the course of the implementation of EBF projects, the European Commission has communicated the attached powerpoint presentation in which the Member States are informed on the main issues to be avoided during implementation.

Beneficiaries must take note of the following main *types of issues leading to errors*:

1. For consular activities, eligibility is limited to Schengen-visa investments, no other consular or diplomatic related expenditure;
2. Information on localization of equipment is absolutely necessary in the closure report;
3. Public procurement: avoid negotiated procedure, open procedures should be the norm;
4. Mixed use: To be conservative in the ex-ante assessment of the use for EBF purpose;
5. Mixed use: To ensure that apportionment is based on reliable data which can be verified;
6. Mixed use: Figures reported in the closure report should be actual and verifiable ones, not a copy-paste of the percentages of the annual programme ;
7. **In all cases, decisions/choices that have been made must be well documented!**

The Responsible Authority would like to underline the high importance to follow the above guidelines in order to avoid errors which may potentially lead to the recovery of EBF funds.

Raphael Scerri
Head of Responsible Authority





Main Lessons learnt from the implementation of the External Borders Fund

- *Savary Antoine*, Deputy head of Unit Internal Security Fund, DG HOME, European Commission



Introduction

Purpose of the presentation:



Inform Member States on the main issues which have been detected in the course of the implementation of the EBF



NB: These issues do not systematically translate into errors* at closure

*Error: difference between cost claim of Member State/EU contribution paid by the Commission



Introduction

Five main types of issues leading to errors:

1. % of cofinancing – specific priorities
2. Visa related issues
3. Traceability/localisation of equipment
4. Public procurement issues
5. Mixed use of equipment/infrastructure



Issues that can lead to corrections at the time of closures or following an ex-post audit



- 1. Application of higher percentage of cofinancing for specific priorities**



Percentage of co-financing specific priorities

Principles of the specific priorities incentives:

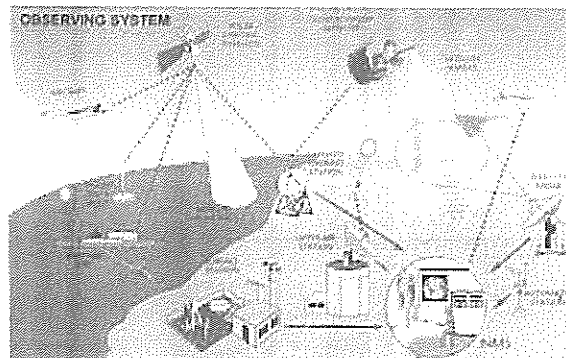
- Higher cofinancing percentage for certain actions (75% / 50%)
- Condition must be verified at closure time
- If condition is not met, 50% cofinancing

If condition cannot be demonstrated by MS Lower cofinancing rate in the closure report to 50%



Percentage of co-financing specific priorities

"1.2 upgrading of the national communication systems to make them interoperable with other Member States"

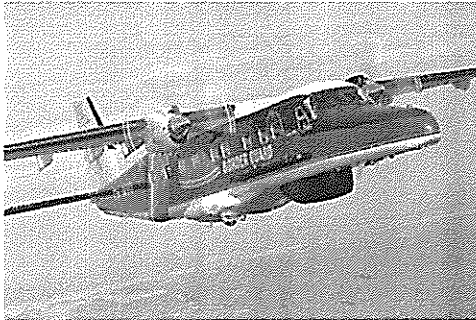


Interoperability with other Member States must be ensured/demonstrated !



Percentage of co-financing specific priorities

"1.3 Purchase and/or upgrading of operating equipment in order to increase the capacity of Member States to take part in and/or contribute to operational cooperation between Member States as coordinated by the Frontex Agency"



Registration in Frontex technical pool of means compulsory !



Percentage of co-financing specific priorities

Under the Internal Security Fund:

- 75% cofinancing = normal rate
- 90% for certain actions (e.g. specific actions)





2. Visa-related issues



Visa related issues **Consular cooperation**

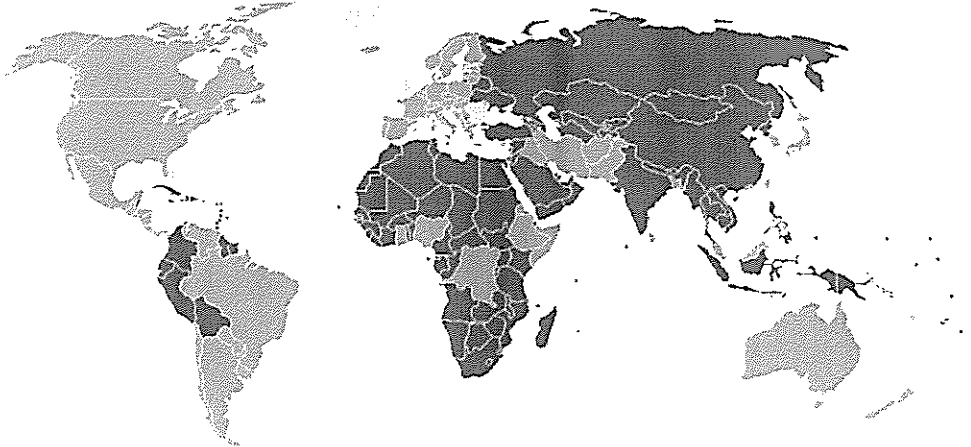
Principles of the EBF intervention

- Financing of Schengen-visa related actions
- Apportionement is often necessary
- No financing of national visas-related actions or consular activities



Visa related issues Consular cooperation

Potential problems identified



Investments in Schengen visa-free countries consulates vs EU added value



Visa related issues Consular cooperation

Potential problems identified



Investments not only limited to schengen visa sections !
(but for whole consulate of embassy...)



Visa related issues Consular cooperation

Potential problems identified:



cost-effectiveness and EU added value (number of visa applications per year/investmen) not always ensured

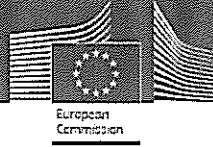


Visa related issues Consular cooperation

Under the Internal Security Fund:

- No modifcaion
- Only Schengen visa related actions eligible
- As general principle cost-effectiveness and EU added value will have to be ensured





3. Traceability – localisation of equipment



Traceability localisation of equipment

Principles of EBF intervention:

- Use only for External Border management
- Localisation : in principle in the vicinity of the border area
- Inventory of assets is required (closure technical report)
- Coordination with Frontex to avoid double financing of assets (depreciation)

Reference document: SOLID/2012/2



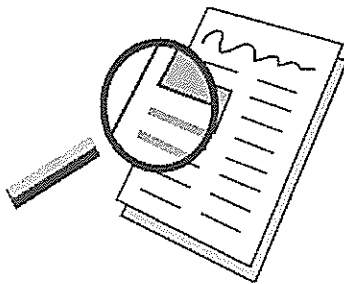
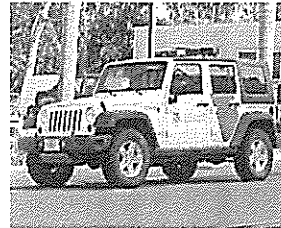
Traceability localisation of equipment

Main problems identified:



Absence of inventory of assets

Surveillance equipment not located
in external borders areas



Absence of information in the final report



Traceability localisation of equipment

Under the Internal Security Fund:

- Information requested in the implementation report and request for payment of annual balance
- Information on localization compulsory for items above 10.000
- Obligation of operational on the spot checks for the RA (minimum percentage – 20% of projects)





4. Public procurement issues



Public procurement issues

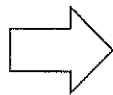
Principles of EBF intervention:

- Absolute compliance requested with public procurement directive and relevant national legislation
- For entities not subject to public procurement directives, compliance with Article 11 implementing rules (appropriate publicity in order to ensure compliance with the principles of transparency, non-discrimination and equal treatment)
- Information in closures

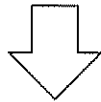
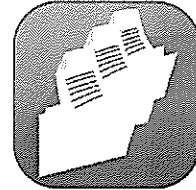


Public procurement issues

Use of Art 15 (secret contract or requiring special security measure) of public procurement directive



OK if Justified/Documented



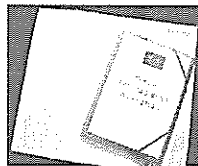
If not, use of Article 15 can be questioned



Public procurement issues

Potential problems identified:

Negotiated procedure can be used exceptionnaly if:



compliant with Article 32 of the
public procurement directive

and



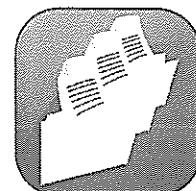
compliant with the CJCE
jurispudence



and

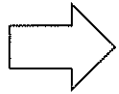


Justified/Documented



Public procurement issues

Main cases allowing the use of Negotiated procedure without prior publication: Article 32

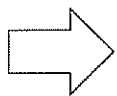


- No suitable tenders or applications
- Extreme urgency
- For supply contracts:
- Absence of competition due to technical reasons, artistic reasons, exclusive rights
 - ☞ Change of supplier resulting in "incompatibility or disproportionate technical difficulties" (3 years)
 - ☞ Research, experiment contract
 - ☞ Purchase of supplies under advantageous conditions
 - ☞ Additional works and services under certain strict conditions (call for competition for the awarding of the initial contract)

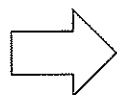


Public procurement issues

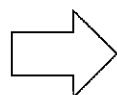
Jurisprudence of the ECJ on negotiated procedures



This procedure must remain exceptional, as it derogates to the principles of transparency and equal treatment



Strict interpretation/jurisprudence of the ECJ on the derogations to open public procurement

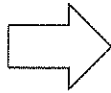


In case of verification the burden of the proof lies with the awarding body

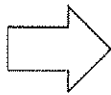


Public procurement issues

Negotiated procedures - obligation of proper documentation of the reasons for derogation to open procedures



Necessary for audit trail

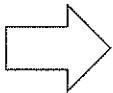


Necessary considering the jurisprudence of the Court on the use of negotiated procedure



Public procurement issues

Potential problems identified:



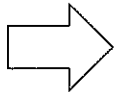
Various problems linked to the application of provisions relating to Article 32 identified under EBF:

- Absence of documentation justifying the use of the negotiated procedure
- Technical reasons not valid/cannot be demonstrated
- Difficulty to demonstrate in a convincing way (figures/comparisons) that the change of supplier was not possible and would have resulted in "incompatibility or disproportionate technical difficulties" e.g. maintenance of different types of aircrafts



Public procurement issues

Potential problems identified:



Problems identified relating to Article 11 EBF implementing rules:

- Non compliance with the minimum obligations of transparency/publicity mentioned at Article 11 for entities not subject to public procurement rules (eg. NGOs)
- Non compliance limiting competition and not ensuring best value for money



5. Mixed use of equipment/infrastructure

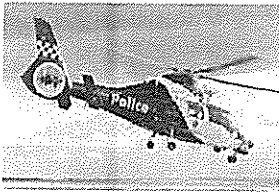


Mixed use of equipment / infrastructure

Mixed use definition:

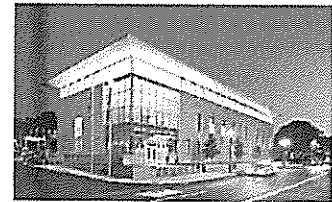
Equipment/building which is not solely used for the objectives of the Fund

Concrete examples:



An helicopter used both for border surveillance and law enforcement activities

A single building is hosting departments dealing with border control activities (eg border police) and other activities (customs)



Mixed use of equipment / infrastructure

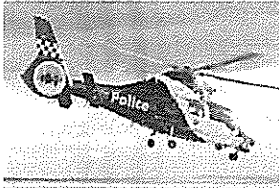
Principles of EBF intervention:

- Financing of equipment/infrastructure only used for the objectives of the Fund
- In case of mixed use, apportionment is compulsory
- Mixed use should be anticipated in the annual programme with a conservative approach
- Percentages of use reported in the closure reports should be based on **actual and verified figures**



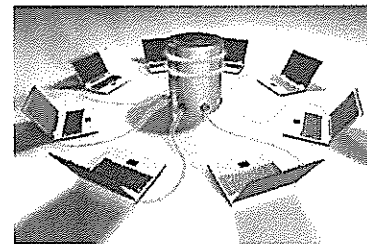
Mixed use of equipment / infrastructure

Potential problems identified:



Reported use of an helicopter in the final report not based on actual figures (flight hours)

Apportionment of the cost of a telecommunication system between EBF and other purposes not supported by a distribution key



In case of wrong apportionment, serious financial consequences given the cost of equipment at stake ! (revision of EU contribution)



Mixed use of equipment / infrastructure

Under the Internal Security Fund:

- Principle of apportionment for mixed use will remain the same
- Exception for equipment used both for custom-related activities and Border-related activities (Article 4.5):

"The actions of which the exclusive aim or effect is the control of goods shall not be eligible."

Eg: equipment used both for border control and customs (eg scanners, portable devices for border checks), eligible at 100% to the Fund

Apportionment will remain compulsory for infrastructure (where the part relating to customs can be easily clearly identified)



Conclusion



- ☞ For specific priorities, compliance with conditions for applying higher cofinancing percentage has to be checked before the closure and justifications included in the technical report
- ☞ For consular activities, eligibility is limited to Schengen-visa investments, no other consular or diplomatic related expenditure
- ☞ Information on localization of equipment is absolutely necessary in the closure technical report.
- ☞ Public procurement: avoid negotiated procedure, open procedures should be the norm!



- ☞ Mixed use: be conservative in the ex-ante assessment of the use for EBF purpose
- ☞ Mixed use: for the final reporting make sure the apportionment is based on a reliable distribution key or data which can be verified
- ☞ Mixed use: figures reported in the final report should be actual and verifiable ones, not a copy-paste of the percentages of the annual programme!
- ☞ **In all cases, document decisions/choices that have been made!**

