

How to become an Implementing Partner in the context of the InvestEU Programme – Questions and Answers

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1/ Importance of the Pillar Assessment

1. What is the Pillar Assessment?

The Pillar Assessment is a review of the systems and procedures of Entities wishing to become Implementing Partners under the future InvestEU programme. The Implementing Partners must meet the requirements in the areas referred to in Article 154(4) of the Financial Regulation ('FR'), which relate inter alia to the internal control system, the accounting system, the independent external audit and the procedures for providing financing to third parties, including the assessment of rules on recovering funds and on exclusion from funds, public adequate information on the recipients and the protection of personal data.

2. Why do we need a Pillar Assessment?

Article 62 of the FR, applicable to the General Budget of the European Union ('EU') sets out the methods of implementation of the budget including 'indirect management'. Under indirect management, the European Commission can entrust budget implementation tasks to countries, organisations and bodies (further referred to as 'Entities') indicated in Article 62(1)(c) of the FR.

The European Commission needs to ensure itself that these Entities guarantee a level of protection of the financial interests of the EU equivalent to that required under the FR for direct management when they manage EU funds. This is the reason why Entities requesting to be entrusted with implementation of the EU Budget under indirect management must pass through the Pillar Assessment.

2/ Characteristics of potential Implementing Partners under InvestEU

3. Who can be an Implementing Partner?

For the purposes of InvestEU, the following Entities, based on Article 62(1)(c) of the FR, can be considered:

- International organisations or their agencies, within the meaning of Article 156 of the FR;
- The EIB, the EIF or the EIB Group;
- Public law bodies, including Member State organisations;
- Bodies governed by private law with a public service mission including Member State organisations, to the extent that they are provided with adequate financial guarantees;

4. Is it possible for commercial banks, which may potentially have interest, to apply to become Implementing Partners?

Commercial banks would not fall into one of the categories of Article 62(1)(c) of the FR, therefore is it not possible for them to become Implementing Partners. However, their

interest is very welcomed and they could participate in the InvestEU Programme as Financial Intermediaries.

5. Can newly created Entities be pillar assessed?

The Auditor should normally be able to assess the last 12 months of an Entity's processes. Consequently, the Entity should have been created at least 12 months prior to the start of the fieldwork by the auditor. Entities that are currently being established can consider applying for calls under the second allocation period currently expected for the mid-term of the next Multiannual Financial Framework ('MFF').

2.1/ Responsibilities of Implementing Partners under the InvestEU guarantee

6. How do the Implementing Partners' contributions from own resources work? How exactly will these funds be provided and by whom? Do they necessarily need to come from the Implementing Partner? Can they be provided by the Member State? In what terms?

As under the European Fund for Strategic Investments (EFSI), it is not expected that the Implementing Partners contribute directly to the EU guarantee underlying the InvestEU Fund or transfer cash resources to the InvestEU compartment of the Common Provisioning Fund. The own resources requirement for the InvestEU Fund implies that a share of the financing provided by an Implementing Partner is made at its own risk without cover from the EU guarantee. The Implementing Partners' financial contributions under InvestEU consist of the amount of financing provided by the respective Implementing Partners, in the form of cash or guarantee, in a risk position at least equivalent to the risk position of the EU guarantee. For instance, an Implementing Partner's financial contribution to the InvestEU Fund may take different forms:

1. Equity co-investment: similarly to EFSI, Implementing Partners can contribute by co-investing own-risk funds with financing covered by the EU Guarantee on a *pari passu* basis, i.e. on the same investment terms and conditions. The split can be 50/50 or on a different basis - the percentages can vary depending on the financial product to be implemented.
2. Portfolio First Loss Piece (PFLP) guarantee for debt products: the Implementing Partners will also be able to take first loss piece exposure for a portfolio of transactions alongside the EU Guarantee. This kind of set-up currently applies in several financial instruments (e.g. CEF, NCF, PF4EE etc.). The Implementing Partner would contribute with a minimum of 5% to the PFLP.
3. In duly justified cases, where the policy objectives pursued require higher risk taking, other models can be explored. For these operations, the Implementing Partner's financial contribution would include risk bearing capacity which is not necessarily provided on a *pari passu* basis with the Union guarantee.

The Implementing Partners' financial contributions should be calibrated to ensure equal treatment while also allowing for differences depending on the type of the financial product (equity, debt), the risk level of the operation and the attractiveness/ market interest in the financial product (e.g. social investment).

7. As an Implementing Partner, with what frequency will we be required to report to the European Commission?

According to the partial agreement reached between Council and Parliament, each Implementing Partner will submit every six months a report to the European Commission on the financing and investment operations under InvestEU.

8. Are there certain conditions under which losses would not be covered by the EU budget that we should be aware of?

The losses to be covered by the EU budget will be specified in the Guarantee Agreements with Implementing Partners. Once a relevant Guarantee Agreement has been signed, the EU guarantee is an on-demand, irrevocable and unconditional guarantee whenever it is called upon by the Implementing Partner. In situations where the Implementing Partner is considered as having breached the contract (Guarantee Agreement) with the European Commission, the European Commission could endeavour to settle amicably any dispute or complaint as convened in the relevant agreement, and in default of amicable settlement, bring the case to Court (e.g. EU guarantee funds used for non-eligible final beneficiaries, non-compliance with European Commission supervisory measures in relation to deficiencies found in the Pillar Assessment).

2.2/ Focus on Financial Intermediaries

9. What is the difference between Implementing Partners and Financial Intermediaries?

An Implementing Partner is a pillar-assessed Entity that will encounter the following benefits/duties:

- Direct access to the EU guarantee (possibility to call on guarantee in case of losses);
- New business opportunities and ability to mobilise private capital supporting key EU policy priorities;
- Contribution with own resources (own risk);
- Management capacity/compliance with contractual obligations subject to audits by the European Court of Auditors and the European Commission;
- Reporting to the European Commission;
- For intermediated operations: transparent selection procedure, due diligence and selection of Financial Intermediaries, conclusion of guarantee agreement or fund agreements with selected Financial Intermediaries, as well as their monitoring.

The Financial Intermediaries will be selected by Implementing Partners when they need to implement the budget under intermediated financing. In this case, the Financial Intermediary will be in charge of the maintenance of the client relationship and of the regular reporting to the Implementing Partner on the inclusion of individual transactions in the portfolio.

10. Can an Entity be an Implementing Partner and at the same time a Financial Intermediary?

Yes, an Entity could for instance work/continue working as a Financial Intermediary of the EIF under the SME window and at the same time become Implementing Partner for products under other windows.

11. How to select Financial Intermediaries?

When implementing financial instruments and budgetary guarantees under indirect management, Implementing Partners may conclude agreements with Financial Intermediaries, which shall be selected in accordance with procedures equivalent to those applied by the European Commission.

In accordance with Art. 154(1) of the FR, the selection shall be transparent, justified by the nature of the action and shall not give rise to a conflict of interest. The selection shall also take due account of the financial and operational capacity of the applicant. The Entity's procedures for the selection of Financial Intermediaries and the equivalence of these procedures to those applied by the European Commission are assessed through the Pillar assessment.

Therefore, a call for expression of interest is not formally required for the selection of Financial Intermediaries provided that the procedures applied by the concerned Entity are equivalent to those applied by the European Commission as established by the Financial Regulation.

The Implementing Partner has to monitor the activities of the selected Financial Intermediaries and regularly report to the European Commission.

12. Does the European Commission provide templates for declarations of honours that would give sufficient assurance from Intermediaries and Final Recipients?

The European Commission does not provide such templates.

When implementing EU funds, Implementing Partners will have to ensure that allocation of funds via Financial Intermediaries are in line with the principles of the new Financial Regulation. This transposition can be achieved either through contractual requirements or appropriate risk-based approach commensurate to the nature/risks of specific operations (such as declaration of honours).

3/ Pillar Assessment in practice

13. How to start the process?

DG ECFIN is the contact point for InvestEU. The interested Entity ('Applicant') has to submit a formal request via the central functional mailbox for the InvestEU Pillar Assessment (EC-INVESTEU-PILLARASSESSMENT@ec.europa.eu) and address it to the ECFIN Director-General using the relevant application form.

DG ECFIN will acknowledge receipt of the application, indicating who will be the contact person for the Applicant. It will also explain the procedure before the Pillar Assessment can be launched, which includes an eligibility check.

The Applicant must provide legal documents and further evidence (e.g. financial statements), which allow an examination of the legal status of the Applicant. It must indicate the relevant person that can be contacted about the legal, operational and financial aspects of their request.

If the information provided is not complete or clear, this will be indicated in the acknowledgment of receipt.

14. Which deadlines apply?

The Pillar Assessment can be requested at any moment, no deadlines apply. It is however to be taken into account that if the Pillar Assessment is not completed in time for the beginning of the implementation period (1 January 2021), it will have to wait for the second allocation period call.

15. How long does a Pillar Assessment take?

In principle, the Pillar Assessment can take from 6 to 18 months, depending on the Entity, the complexity of its structure, the internal departments involved, the availability of resources when the auditors carry out the assessment and the number of pillars to check.

3.1/ Pre-assessment: Eligibility check¹

16. How is the pre-assessment performed?

The pre-assessment consists of an eligibility check. It is based on the documents provided by the Applicant and should be carried out by DG ECFIN services within 2 months.

The European Commission provides the Entity with an Application Form, together with a questionnaire, in order to obtain the information needed to perform the eligibility check.

17. Which factor(s) will be assessed in the eligibility check?

Only Entities as described in Article 62(1)(c) of the FR can be considered. The European Commission needs to be satisfied that the potential Implementing Partners are able to meet the policy objectives set out in the InvestEU Regulation.

In addition, for the purposes of conducting a Pillar Assessment in the sense of the Financial Regulation, the European Commission would check whether the Entity has an adequate financial guarantee and whether it will have been operational for at least 12 months prior to the start of the Pillar Assessment procedure.

18. What is an adequate financial guarantee?

For InvestEU, we would consider an adequate financial guarantee a guarantee from the Member State or other strong financial guarantees, including the own financial strength of the Entity.

19. Are there any statistics on how many Entities did not pass the eligibility check performed by other DGs so far?

To our knowledge, no such statistics exist. The eligibility check by a DG reflects the policy priorities of that DG and the programmes with which it works. The eligibility check is the pre-assessment for InvestEU, other European Commission services may refer to their pre-assessment phase with other names.

¹ Please note that the eligibility check is specific for InvestEU. Other Commission services may refer to the pre-assessment phase with other names.

20. Can an Entity apply for Pillar Assessment with a DG for a given programme, pass the eligibility check and Pillar Assessment, and then become an Implementing Partner for another programme managed by another DG?

Yes. The Pillar Assessment is recognised by all European Commission services.

It is however to be noted that some programmes require specific pillars to be passed. For InvestEU, Entities need to have passed the financial instruments pillar, including its additional sections on budgetary guarantees, AML and taxation.

It should also be noted that the Pillar Assessment is a formal requirement to become an entrusted Entity. It does not replace the separate eligibility check based on the requirements under Article 12(2) of the InvestEU Regulation.

3.2/ Pillar Assessment

21. What happens after the pre-assessment?

If the outcome is positive, the detailed steps to be taken before launching the Pillar Assessment will be explained and communicated to the interested Entity by DG ECFIN.

22. What are the Terms of Reference (ToR)?

The ToR are composed of:

- The instructions for the Auditor;
- The Questionnaires of each Pillar.

23. Which are the characteristics of an Independent Auditor?

The potential Implementing Partner must contact an external Independent Auditor to perform the Pillar Assessment.

This Auditor must be:

- a. a registered member of a national accounting or auditing body or institution which in turn must be a member of the International Federation of Accountants (IFAC);
- b. certified to perform statutory audits;
- c. functionally independent of the Entity. Hence, any internal Auditor of the Entity subject to the assessment is not eligible.

The Entity is free to choose the Auditor but the European Commission's methodology of the assessment has to be fully complied with.

24. Entities may want to contract an audit firm that has signed an Audit Framework with the European Commission, since this has some distinct advantages. Can we find the list of audit firms?

A list of framework contractors that have experience in Pillar Assessments may be provided upon request. However, using these audit firms is not compulsory or solicited. The only requirements are that the Auditor has to present certain characteristics as laid out in the Terms of Reference ('ToR').

25. How many Pillars do we need to assess to become Implementing Partner under InvestEU?

Pillars 1, 2, 3, 7, 8, and 9 (namely Internal Control, Accounting, External Audit, Exclusion from access to Funding, Publication of Information on Recipients and Protection of Personal Data) are mandatory for every Entity, regardless of the program under which the Entity wants to manage the EU budget via indirect management. Among these, Pillars 1, 2 and 3 must receive a positive assessment for the Pillar Assessment to be considered as having a positive outcome overall. Furthermore, to implement EU budget under InvestEU specifically, the Entity needs to assess Pillar 6 on Financial Instruments in all its parts (including additional sections 6A, 6B and 6C).

26. In which cases would an InvestEU Implementing Partner need to be assessed on Pillar 4 (grants) and/or Pillar 5 (public procurement)?

A potential InvestEU Implementing Partner would need to be assessed under Pillar 4 (grants) if it wishes to do blending or technical assistance via grants, while it would need to be assessed under Pillar 5 (procurement) if it wishes to provide technical assistance services via procured external contractors.

27. Which are the main steps of the Pillar Assessment?

The Applicant contracts the Auditor to perform the Pillar Assessment.

The Independent Auditor assesses the Applicant's system in place and the controls, rules and procedures applied by the Entity for each Pillar against the criteria set by the European Commission. The fulfilment of these criteria will be answered by yes or no options. In case of a positive answer, there will be further key questions and criteria, in order to assess the effectiveness and efficiency of the particular pillar and points will be attributed. On the basis of these key questions and criteria, the Auditor will also have to perform tests and procedures to check the practical functioning of the procedures. The assessment should be performed (as per Article 154(4) of the FR) in accordance with the proportionality principle. This means that the assessment should be proportional to the specific risks of the scope of budget implementation tasks to be entrusted to the Entity.

Optionally, the Applicant may share a draft Pillar Assessment Report requesting DG ECFIN to provide feedback on specific points, without prejudice to the final European Commission decision. The Auditor shares the final Pillar Assessment Report and DG ECFIN looks at the final recommendation from the Auditor.

- If the outcome of the Pillar Assessment is positive, the Applicant is eligible to become an Implementing Partner. The application to become an Implementing Partner under InvestEU will be done via a call of expression of interest which the Applicant can answer even before completion of its Pillar Assessment.
- If the outcome of the assessment reveals that the systems and procedures of the Entity are only partially compliant, the Auditor should recommend actions to improve and make the systems fully compliant with the Pillar in case of material deficiencies. These recommendations will form a basis for the supervisory measures that the European Commission will take. If the weaknesses are too serious, the European Commission can decide not to sign a Guarantee Agreement until the recommendation for remedy is implemented.
- If the outcome is negative, the Entity will not be granted the pillar assessed status.

The final decision will be communicated to the Applicant.

28. What is a material deficiency?

A material weakness or deficiency in systems, controls, rules and procedures is an Entity's identified deficiency that might influence the decision of the European Commission to entrust budget implementation tasks under indirect management to the Entity (e.g. identified material weakness on control activities related to preventing, detecting and correcting irregularities and fraud).

For a material deficiency to be identified, the score assigned to the related question would typically be low. A material deficiency can be remedied by appropriate measures enshrined in the guarantee agreement with the European Commission, if the European Commission decides that this would be appropriate.

29. Why do even Entities under banking supervision need to pass a Pillar Assessment?

The Pillar Assessment is a requirement under the Financial Regulation and covers some areas that are not covered by ECB/national banking supervision (e.g. grants, procurement). For the implementation of budgetary guarantees, the Pillar Assessment aims to ensure that the Entity has adequate system, rules and procedures to measure credit risk. There are also parts which fall under the scope of banking supervision (e.g. accounting); this will facilitate the Pillar Assessment process for the Entities which are already supervised on these elements, as auditors may partly rely on existing assessment to carry out their work.

4/ The Guarantee Agreement

30. Can the Guarantee Agreement with the European Commission be signed before the conclusion of the Pillar Assessment?

A Guarantee Agreement with the European Commission under InvestEU can be signed only after the completion of the Pillar Assessment process and in case of reported weaknesses, supervisory measures via contractual arrangements have to be implemented in the Guarantee Agreement.

31. What happens if there are supervisory measures?

The supervisory measures are in the form of a recommendation to take actions in order to fully comply with the requirements of the various pillars and have procedures equivalent to those of the European Commission.

5/ Call for expression of interest

32. Will there be one or several calls?

The Pillar Assessment is a formal requirement to become an entrusted Entity. There are no calls for carrying out the Pillar Assessment. Entities apply directly to the European Commission for an assessment with a view to be pillar assessed.

To select Implementing Partners for the purpose of InvestEU the European Commission will launch calls for expression of interest, with the first one tentatively scheduled for beginning 2020, subject to the adoption of the legal basis. Entities wishing to become an Implementing Partner under InvestEU do not need to have completed the Pillar Assessment to answer the call, but they are expected to be in the process of passing it.

6/ General issues on the Pillar Assessment

33. How much does the Pillar Assessment cost?

Past experience with former Pillar Assessments shows that costs vary depending on the size, preparedness and level of sophistication of the assessed Entity as well as the number of pillars to be assessed and the fees charges by the Auditor.

34. Who pays for the Pillar Assessment?

The assessed Entity bears the costs of the assessment, including the costs for the Auditor. However, Entities, in particular those who may require support to prepare for or address the results, can request support for the Pillar Assessment from the Structural Reform Support Programme supported by the Union. Requests for support can be addressed to the European Commission's Structural Reform Support Service and will be considered in the annual funding exercise.

7/ Terms of Reference – updated Questionnaire

35. Can you provide detailed information regarding the subject of Tax Avoidance in the Pillar Assessment?

The tax avoidance concept relates to a series of standards (both EU and international) that aim broadly at ensuring that tax rules for effective taxation are in place and not circumvented. On the basis of these standards, EU funded projects should not involve aggressive tax planning and should have established sound business reasons (other than tax reasons) for a given structure. The Pillar Assessment will assess the rules and procedures that Entities have in place for assessing tax avoidance risks. Practically this can include systems for assessing whether the financial flows relevant to the projects are not benefiting

from tax regimes identified by the EU as harmful. Detailed information on this can be found in the related European Commission communication² of March 2018.

36. Can you provide an outline of the new Pillars Exclusion, Publication and Data protection?

The Questionnaire on Pillar Assessment reflects the Financial Regulation, to ensure compliance with the following related articles:

- Pillar 7 – Exclusion from access to funding, for financial instruments/budgetary guarantees: Art. 136(1)(a)-(d) and (g)-(h), and Art. 141(1)(b) and (c);
- Pillar 8 – Publication of Information on Recipients and other Information: Art. 38(2)-(4);
- Pillar 9 – Protection of Personal Data: Art. 5.

37. How will the topic of EU Restrictive Measures be dealt with in the Pillar Assessment? Will it be part of the Pillar Exclusion?

EU restrictive measures are not included in the Financial Regulation; hence they are not addressed through the Pillar Assessment. These measures will continue to be addressed through contractual arrangements.

8/ Updates of the already pillar assessed Entities

38. What if an Entity is already pillar assessed?

The already pillar assessed Entities need to undergo an update.

39. Does my Entity need to re-take pillars already assessed?

Pillar Assessments – if completed based on the previous ToRs – will continue to be valid after the introduction of the new Terms of Reference.

The Entity will have to confirm to the European Commission that no substantive changes in its systems have occurred. If they have occurred, an assessment needs to be performed for those systems, rules and procedures. The already pillar assessed Entities need to retake those parts of the Questionnaire that assess procedures that have undergone substantive changes since the last Pillar Assessment was completed. It is up to the Entity to communicate to the European Commission that such changes have occurred at the stage of request for a Pillar Assessment update. Furthermore, the Entity will have to provide replies to the new pillars (7, 8, and 9) not included in the previous Pillar Assessment, to the extent they are relevant to the budgetary tasks to be implemented by the Entity.

For InvestEU, the Pillars to be taken are the mandatory new ones (7, 8 and 9) and Pillar 6 in all its parts, even if it has already been pillar assessed in the past.

² Communication from the European Commission on new requirements against tax avoidance in EU legislation governing in particular financing and investment operations, see https://ec.europa.eu/info/publications/eu-anti-tax-avoidance-requirements-financing-and-investment-operations_en

40. Who is the contact point in the European Commission (responsible DG) for the updates of those Entities interested in collaborating under the InvestEU Programme?

As long as the Entity is requesting an update for participating in InvestEU, the responsible European Commission service will be DG ECFIN.

Requests for an update should be sent to the central functional mailbox for the InvestEU Pillar Assessment (EC-INVESTEU-PILLARASSESSMENT@ec.europa.eu).

41. What happens if there are changes to the systems of the Pillar Assessed Implementing Partner?

Once a positive assessment has been carried out, the Entity will have to inform the European Commission if there is a substantive change to the assessed systems. Depending on the nature of the change, this may require an update of the assessment.