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Revision of the EC financial regulations

Remarks and proposals by the Practitioners' Network for European Development Cooperation

The Practitioners' Network for European Development Cooperation is an open-platform for exchange, coordination and harmonisation between European practitioners in the field of Development Cooperation. It is open to all European Agencies and Administrations involved in the implementation of ODA.

The Members of the Practitioners' Network are committed to the principles of aid effectiveness set out in the Paris declaration, the Accra Agenda for Action and the European code of conduct on Division of Labour. In this spirit, they have already accomplished significant steps and are working for still more coordination, exchange of information and good practice, co-financing and delegated cooperation.

The modifications to the financial regulations adopted in 2007 opened the way to delegated cooperation between the Commission and the Member States or their agencies. The regulation of the 10th EDF was also designed accordingly. This enables the Commission and a Member State or bilateral agency involved in a particular project or programme to designate one leading institution according to its comparative advantages (in-country presence and staffing, sector experience etc.).

Thanks to these new rules and to the Commission's current financial instruments, bilateral donors and agencies and the Commission have been developing the co-financed schemes, both under delegated cooperation and through other facilities. This also enables us now to draw some lessons from the experience gathered so far and to identify desirable improvements.

In this paper, a group of bilateral donors and agencies members or participants of the Practitioners' Network¹, with the explicit support of many others, set out a number of domains where improvements are needed. This paper is our joint proposal to the Commission, notwithstanding the fact that some issues may not have the same relevance for all of us.

Where a provision of the Financial Regulations or of its Implementing Rules has been clearly identified as dealing with the relevant issue, we make a corresponding modification proposal. In other cases, we have pointed out problems or needs but we feel that the Commission and the Member States will be best suited to identify the appropriate way to take them into account.

All the proposals below relate to the area of development cooperation in a broad sense i.e. irrespective of the region (Neighbourhood, pre-accession, Latin America, Asia) and should be ultimately translated into the EDF for application to ACP countries.

1. General issues

1.1. It should be made clear that the provisions concerning delegated cooperation and other modes of collaboration with Member States and bilateral public entities are guided by the need to ensure donor coordination, aid effectiveness and the decrease of transaction costs.

- This principle might be recalled in the text of the Financial Regulations, e.g. as a general provision concerning the methods of implementation (Title IV, Chapter 2).
- Implementation through Member States or their agencies should much more look like implementation through international organisations

¹ ADA, AFD, DFID, GTZ, KfW, Minbuza.

○ To this end, the levels of implementing modes could be simplified. The only effective distinction is in fact direct implementation (which can be centralised or decentralised) and indirect implementation (through another, bilateral or international, public organisation).

○ It should also clearly be stated as a general provision that for each project or programme, the choice of the method of implementation should be guided by the principle of efficiency and by the willingness to ensure donor coordination, starting from the European level. This might be appropriate in one of the first paragraphs of Art. 39 IR.

1.2. A more flexible time frame could be provided for development projects than for the general budget. Especially the (n+1) rule for contracting, but also the (n+3) rule for disbursements are often seen by Practitioners as an obstacle to joint operations, e.g. with regard to partners' time frames or in the case of sector programs. However rapidity of implementation and disbursements should always be monitored and insured.

1.3. Taxes such as VAT related to the Commission's programmes implemented by another organisation should be covered by the Commission budget in the cases where the implementing agency could not recover them from the partner country. This is in fact provided for in article 15 of the IR, but the formulation leaves room for interpretation and in reality, it is very difficult to have this provision apply. A more clear statement in the FR or in the IR would be necessary.

1.4. In contracts, Art. 130. 4. c) of the IR provides that community law applies and is complemented if necessary by any national law. In practice, the Commission often imposes Belgian law. To clarify the rules, we propose to provide that as a general rule, the law of the implementing agent will be chosen to complement community law (Belgian law if the Commission is the implementing agent and the relevant European national law if the implementing agent is a Member State or a public agency)

1.5. All improvements to the FR of the Commission's budget relating to development cooperation should also be translated into the Financial Regulations of the 10th EDF. We strongly recommend a subsequent revision of the EDF Financial Regulations.

2. Issues specific to delegated cooperation and grants

2.1. Conditions of the institutional assessment referred to in Art 56.1 FR should be clarified : duration, notification of material changes etc. Contents of the assessment should be in-depth and accurate enough, so that the conditions of delegated cooperation could be simplified for a quick implementation in each particular case.

2.2. In particular, template agreements (general conditions) for delegation from the Commission to from MS and their agencies should be substantially simplified. The delegation agreement is indeed much 'heavier' than the transfer agreement (from a MS to the Commission). We should aim for more similarity in both templates.

2.3. So far, agreements have to be completely re-negotiated for each operation on the basis of general templates. Modalities can vary depending on the source of funds and the interlocutors in the Commission. The Commission should be given the possibility to capitalise on the work already done and to validate new templates with reasonable flexibility.

2.4. In transfer agreements it seems that the Commission's funds are always disbursed first and other donors' funds are disbursed later. Disbursements should in principle be proportional to each Donor's overall contribution. This would help avoid problems when there is a need for repayment of funds and would spread the risk of unused funds.

2.5. Co-financing of a project/programme by the donor to whom the Commission wishes to delegate funds may be a decision criterion, but it should not be a fixed rule. Delegations

should be able to decide upon efficiency and effectiveness criteria and comparative advantages. Clarification of this issue would be useful (e.g. in Art. 39 IR).

☞ Subsequently, the Commission should be entitled to finance an external action in full (delete – or soften - conditions in Art. 169 FR; Art. 253 IR)

2.6. Rules defined for delegated cooperation, incl. use of partner systems, should apply to grant allocations.

☞ Add “grants” in the last paragraph of Art. 56 FR which would now read “The Commission may accept that the audit, accounting, grant award and procurement systems of the entities referred to in paragraphs 1 and 2 are equivalent to its own...”

2.7. The ceiling of 7% to cover administrative costs, which applies to grants (Art. 181 (3) IR), may be too low in the case of small projects or TA projects. Most of the Member States agencies are implementing bodies, i.e. they do not externalise but incur the costs of implementation themselves, which is often more cost effective. We recommend either a flexible approach with regard to the 7% ceiling rule or its non-application to the bodies listed in Art. 54 (2) (c) FR. The (enhanced if needed) institutional assessment referred to in Art 56.1 FR provides the necessary basis of mutual understanding and confidence.

2.8. The rule of using separate bank accounts for each project (Art. 41 (2) (f) IR) appears cumbersome in the case of a great number of small amounts and in the case in which the Delegatee body applies a transparent internal accounting system, through which it handles a large number of projects. A well developed internal accounting system according to international accepted standards provides more accountability than a separate bank account. Therefore, that requirement could be left to the appreciation of the Commission in the case of delegation to a Member State or its agency, given that, in that case as well, the institutional assessment provides the basis for confidence about the quality of internal accounts.

3. Issues specific to facilities and other co-financing modes

3.1. The Commission should be given the possibility to launch or participate with a greater flexibility to mechanisms aimed at pooling instruments and coordinating European actions in the field of development cooperation.

3.2. However the use of trust funds, as they are managed by the World Bank or the UN agencies, has a number of drawbacks (lack of transparency, lack of legal structure, diffuse responsibilities...). Moreover, a situation where the multiplication of trust funds is such that amounts processed through these parallel channels are comparable to the amounts managed through the regular budgetary channel should be avoided. For those reasons, we consider that trust funds could be used as a financial vehicle but should be strictly limited (e.g. to responses to crisis and post-crisis situations).

3.3. Notwithstanding the issue of governance of European trust funds or facilities, the financial management should be insured by specialised institutions, with due consideration to the technical expertise and existing capacities.