

Summary of comments on envisaged modifications to the Financial Regulation of the European Commission

The text below is the result of an exchange of views among European development practitioners on the draft modifications to the Financial Regulation and to the Implementing Rules, with regard to the consequences of such modifications on implementation of development programmes while applying the principles of aid efficiency and division of labour in the sense of the Paris and Accra declarations, the European Code of Conduct and the consequences of the Lisbon Treaty on complementarity between EC and Member states in European external action and development policy.

We believe that the below arguments and proposals, being based on lessons of European cooperation during these last years and being shared by many European institutions in charge of Official Development Assistance, should be taken into account during the discussions, be it in the European Council or in the European Parliament. However, this document is a working document of the Development Practitioners. It is not meant to be officially dispatched, but to serve as a common reference to the practitioners while contributing e.g. to the analyses and positions of Member States negotiations on the European Council level or to the reflexions of Members of the European Parliament.

This paper is organised along the main modalities of joint action between the European Commission and Member State Agencies, identified as : delegated cooperation / indirect management, management of financial instruments, trust funds.

1. Indirect management of EU budget and related rules

We see the simplification of rules and the principle that the regulation on indirect management is the same for all eligible actors, as a positive evolution. For better aid efficiency, the Commission can decide to delegate funds according to comparative advantages without being influenced or blocked by more or less cumbersome procedures.

1.1 Ex-ante assessment

Art. 53b 2.(c) refers to the ex-ante assessment of the rules and procedures of the national agencies. However it does not indicate that the audit is carried out at the request and at the expense of the Commission, who decides if the result of the audit is satisfactory or not and along which criteria, if it is valid (or not) for all programmes of the Commission and how long it is valid. These aspects should be clarified.

1.2 Reporting requirements (Art. 53b)

We also fully understand and agree to the need for reporting about the actions and comforting the Commission with regard to sound management of the funds. However, the following envisaged requirements and deadlines appear to be unrealistic:

- Providing annually by 1 February a report on each of the delegated tasks. We understand that the report is additional to the accounts of the expenditure made by the delegatee for the relevant project (mentioned in 53b. 5.(b)). If full fledged project progress reports are envisaged it should be taken into consideration that, in their commitment to respect ownership of projects and programmes by the partners, development agencies generally require reports to be generated by

the partners. One month is far too short for implementing entities to be able to collect reports from the field, to carry out quality check and to write their own reports/comments.

- Providing annually by 1 February (i.e. before the annual external audit of the accounts of the institution has been carried out) a management declaration of assurance. We are of the opinion that there should be no requirement for the provision of management declarations of assurance or auditor's opinions since the Commission has already carried out an ex-ante assessment of the rules and processes of the national (development) agency which is still valid.

If, however, the obligations listed in Art. 53b are to be included in the FR, it is absolutely necessary to introduce very clear elements of flexibility (particularly in the timing), either in the FR or in the IR, in order to take into account the constraints of the implementing entities and in order not to overload projects and actors with disproportionate administrative burdens. We would consider the following rules to be reasonable:

- A written report is required annually for significant amounts (e.g. above € 300,000). But for smaller amounts, a completion report at the end of the action is sufficient. Moreover, the Commission and the implementing entity can agree upon the most suitable format for reports (e.g. grouped reports in the case of small and/or interlinked contributions).
- In order to keep the delay of 1 February, narrative reports may refer to a period ending earlier than 31 December e.g. 30 November or 31 October.
- The audits and controls referred to in parag. c) are those, if any, which are carried out or ordered by the implementing entity according to its own rules of implementation and monitoring of projects. No additional audits or controls will be required by virtue of the Commission's contribution.
- There is just one declaration of assurance each year whatever the number of projects under delegation; it bears on the functioning of the whole institution and is meant to certify that the conclusions of original independent external audit are still valid.
- Taking into account the fact that the annual external audits of the institutions are generally not finished and approved before May/June of the following year, the management declaration of assurance, if provided by 1 February, may contain a reserve relating to the final verification of accounts by the external auditors. This would also enable taking into account the calendars of organisations whose financial year does not end on 31 December.
- The audit opinion on the management declaration of assurance has to be delivered within a reasonable delay (4 months) after closing of accounts of the entity (instead of 15 March).

1.3 Additional points:

- Terminology

The terminology used in the proposed title of Art 53b FR (Indirect management with entities and persons other than Member States) and Art 53c (Ex ante controls under indirect management) is misleading, since the provisions therein seem to apply also to e.g. Member States' ministries entrusted with external aid budget implementation tasks. The Commission has clarified that these provisions and corresponding provisions of the IR do indeed apply to Member States, but clarifications into the actual FR and IR texts are still needed.

- Contracts

We have been informed that the Commission is working on new delegation and assignment contract templates and we welcome that initiative. As a general rule, we think that the Commission should be able to capitalise on experience and to adopt new templates with some flexibility, instead of having to refer to the same template for every new project.

- Disbursement/repayment rules

In addition, we attach importance to the fact that in such cases where Member States' / agencies have transferred funds to the Commission for the purpose of co-financing a development project with the Commission, the Commission makes disbursements on a pro rata basis. The pro-rata rule will then apply to repayments, in the case of interrupted programs.

2. Indirect Management of financial instruments

Considering Art. 120 b of the FR, financial instruments are clearly meant to widen the range of financing tools of the Commission, who wants to reach higher leverage effects through the use of products and modalities such as loans, guarantees or equity investments. Practitioners are very supportive of this. However there is a lack of clarity between Art 120b 3. and Art 53(1) 2c as to the eligibility of institutions, since these articles do not indicate which financial institutions are actually entitled to manage financial instruments (apart from the EIB). Art. 39b 1. of the IR provides a definition of such financial institutions, which should also be used in Art. 120b 3 of the FR.

3. European Trust funds

- We understand that the ability to create trust funds would enable the Commission to mobilise funds more quickly than under the general budget procedures. We welcome this but we also consider that creating trust funds goes with the risk of multiplication of structures and loss of clarity of the European development aid architecture. The Commission's intention is to resort to that instrument on rather exceptional cases and for predefined situations (emergency, thematic issues), but this is not a guarantee upon the use which will be made of trust funds in the medium to long term. We think that the Commission should always explore first the possibilities that the EU would have through the existing instruments and delegation mechanisms.
- Trust funds might be an interesting tool to improve the structure of existing regional facilities such as the NIF, which is currently made of one facility for the Commission and one trust fund for MS contributions. In that case, the limitation to emergency and thematic issues might be too narrow. We would recommend an explicit limitation of the frequency of trust funds rather than a limitation by purposes.
- The FR and the IF should not set in advance governance rules for the management and governance of trust funds, who should be set with reference to the experience of existing facilities and of (positive and negative aspects of) the governance of multilateral trust funds. For example, the Commission must not be the financial manager of the funds, a task that can be entrusted to a financial institution or bank. We recommend foreseeing an in-depth discussion between the Commission and the other European development practitioners, in order to jointly define the rules of functioning of European trust funds.

4. Other issues

Grants

Chapter 2 of the FR is dealing with grants. Art. 114 to 116 establish the proceedings for awarding grants through calls for proposals. Art. 109 6. provides that the EIB and the EIB group do not have to go through calls for proposals to be awarded grants. This is justified in as far as the EIB (and its subsidiaries) is not the final beneficiary of grants and that its procedures are considered compliant with EC rules. The same should apply to bilateral development institutions, who also are not final beneficiaries, but development partners of the EC, as long as they have been subject to a successful independent external audit.

We propose to add the following at the end of Art. 109 6. "or to the entities referred to in Art. 53 1. (2) (c) and (f)".

Service contracts

Article 88 provides that the EIB and its subsidiaries do not have to go through the Commission's procurement process for the conclusion of service contracts with the Commission. For the reasons explained above, the same rule should apply to Member States agencies that fulfil the conditions for indirect management of the budget.

We propose to add the following at the end of Art. 88 3. "or to the entities referred to in Art. 53 1. (2) (c) and (f)".