

Better Return on Investment

Make it better for civil society, better for Europe



Notes

Policy Briefing on the Commission's proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Financial Regulation applicable to the general budget of the European Union (Brussels, 28/05/10)

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Structured Dialogue Group

In 2008 the European Commission launched a Structured Dialogue with over 70 civil society organisations and think tanks participating in the Europe for Citizens programme. The group's main goal is to encourage the participation of European citizens in EU project and activities. This policy briefing has been endorsed by all members of the so-called "Structured Dialogue Group" (see full list in Annex V).

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EXECUTIVE SUMMARY

The success of the European Union (EU) is marked by its growing influence in society. Its development, more than ever, requires the **full participation of civil society** – the main vehicle of **citizen engagement**. Such participation requires human and financial resources to which the European Commission contributes funding to hundreds of thousands organisations directly and indirectly every year. Especially in times of economic transformation, such resources must give the best return on investment for a **successful partnership**.

Starting from this premise, a civil society working group has been set up within the Structured Dialogue Group¹ to make recommendations on how European funding rules can be improved for a **better return on investment** for both the EU and civil society.

The Structured Dialogue Group welcomes the Commission's proposal for the Financial Regulation (FR) review, as submitted on the 28th May to the European Parliament (EP) and the European Council, even if the new text only partially takes on board its recommendations. The proposal shows a positive attitude in pursuing the principles of **efficiency, effectiveness, transparency, accountability, consistency, risk-taking, cutting red tape** (reducing administrative costs) and **introducing innovative financial mechanisms**².

Nonetheless, the new text does not fully match the stated principles lacking consistency, clarity in some of its parts, and not taking in to consideration unintended consequences. Additionally, there is no acknowledgment of a lack of consistency in interpreting the FR and Implementing Rules (IR) across DGs: officials apply the same financial provisions differently in similar situations.

This policy briefing deals with the main issues that civil society organisations (CSOs) consider not having been properly addressed in the Commission's proposal:

- **General issues**
 - In kind contribution in co-financing: to be recognized as eligible costs (cf. IR art. 165a. 2 and art. 172)
 - Double ceiling: ceiling of the grant to be determined as a total only - not as a percentage (cf. FR art. 108.a)
 - Systemic error: new regulation to be clarified considering risk of unintended consequences (cf. FR art. 53b and IR art. 47.4)
 - Tolerable risk of error: to be clarified in its application (cf. FR art. 28b)
- **Issues specifically to indirect costs:**
 - Project grants: the 7% cap has to be increased up to 15 – 20% (cf. IR art. 181.4)
 - Operating grants: indirect costs to be claimed when degressivity rule comes into force (art. 113 FR)

¹ Cf. Annex V

² See Euclid's evaluation table, cf. Annex IV

- **Issues specifically related to operating grants:**
 - Non profit rule: need to differentiate between surplus and profit, and give the possibility to not-for-profit grantees to reinvest the surplus in the mission and build reserves (cf. IR art. 165)
- **Issues related to tenders:**
 - Competition for tenders: to add CSOs to the list of exceptions that can be excluded from the competition procedure (cf. IR 123.2)
 - Negotiation procedure without a prior publication of a contract notice: to apply the procedure to CSOs too (cf. IR 126)
 - Negotiated procedure with a single tender: the scope of the CSOs should be broader, including all the different kind of CSOs (cf. IR 242.1)
- **Other issues not requiring a formal change of the provisions:** the Structured Dialogue Group makes additional recommendations with a view to achieve more efficiency and a better return on investment. The most important points are about: creation of a register/database for applicants, need for more consistency across services (DGs), the choice of modalities, level of co-financing, timing of award for operating grants and auditing

In the text of the briefing a detailed explanation of every issue has been provided, so as the Group's related recommendations. In Annex I the issues are listed by article in numerical order.

In order to value all the recommendations, the authors of the policy briefing underline the importance of the financial regulation as a legislative source. FR should provide a general overview and apply in case of legislative vacuum. In this case, the FR should prevail over the other regulations in order to avoid inconsistencies.

The Structured Dialogue Group recommends:

- To organize a roundtable, possibly at the European Parliament with Members of the European Parliament, Commission officials and other stakeholders on the issues raised in this policy briefing.
- To make an assessment of the implementation of the FR and IR, addressing in particular (in) consistency of implementation across services; possible improvements to solve current issues, including guidance.

CONTENTS

1. WHO ARE WE?

2. WHY ARE WE ADVOCATING?

3. WHAT CAN BE IMPROVED?

3.1 General issues

3.1.1. In kind contribution - co-financing (Art. 165.a.2 and art. 172.a IR)

3.1.2. Double ceiling (Art. 108.a FR)

3.1.3. Systemic error (Art. 53b FR and Art. 47.4 IR)

3.1.4. Tolerable risk of error (Art. 28b FR)

3.2. Indirect costs (Art. 181.4 IR)

3.2.1. Project grants

3.2.2. Operating grants

3.3. Issue specifically related to operating grants

3.3.1. Non profit rule (Art. 109.3 FR and art. 165 IR)

3.4. Tenders (Art. 123, 126, 242 IR)

3.5. Other issues not requiring a formal change of the provisions

3.5.1. Register/database of applicants

3.5.2. Consistency across services (DGs)

3.5.3. Authorising Officer choice of modalities

3.5.4. Timing of award (Art. 112 FR)

3.5.5. Level of co-financing (Art. 108 FR and Art. 164.1.d.i IR)

3.5.6. Auditing

4. NEXT STEPS

1. WHO ARE WE?

In 2009, a civil society Working Group on EU financial support (WG) was set up within the European Commission's Structured Dialogue Group³.

The WG consists of representatives of civil society organizations among the most influential networks in Europe⁴. The group has been co-chaired by **Mr. Filippo Addarii** (Euclid Network) and **Mrs. Roshan Di Puppo** (Social Platform), currently replaced by **Mr. Maurice Claassens** (SOLIDAR).

The WG started working on the review of the FR and IR. It drew on the "Striking a Balance" report produced in 2005 by a coalition of NGOs (Concord, Social Platform, SOLIDAR and European Women's Lobby) and an independent consultation launched by Euclid Network in 2009⁵.

The WG responded to the public consultation on the FR and IR launched by the Commission in October 2009⁶. The work has been then endorsed by all the members of the Commission's Structured Dialogue Group and other networks as listed in ANNEX V.

³ Cf. Annex V

⁴ Cf. Annex III

⁵ Cf. Annex II

⁶ Cf. Annex II

2. WHY ARE WE ADVOCATING?

The WG aims to create a better return on investment for both the European Union and civil society. Ultimately tax-payers will benefit from a more effective use of resources. The WG has mainly focused on grants which are the main source of European funding for civil society.

It pointed out the need for a more efficient and effective role of the European Commission (EC), the urgency of a more transparent and accountable system that is closer to organizations and citizens, more user-friendly and respondent to their needs.

It is fundamental to **simplify the application process** that too often badly affects the funding application process and results, and notably:

- To decrease costly duplication and bureaucracy within the Commission,
- To decrease time-frames from proposal to award,
- To decrease costs of failed applications,
- To increase room for innovation,
- To cut red tape (reducing administrative costs)

The complexity of the process not only creates a barrier for grass-roots organisations, but also represents missed opportunities for the European Union as it can discourage the best CSOs from applying – with EU funding becoming a "last resort" source of funding.

Additionally, due to the current financial and economic crisis, several CSOs are suffering because of the relevant cuts in funding for the sector. Therefore there is an urgency to act now to make the best use of available resources.

3. WHAT CAN BE IMPROVED?

The Commission's proposal⁷ introduces improvements - the WG welcomes progresses with pre-financing, bank guarantees and cascading grants⁸ - and the initial statement goes in the right direction, declaring and accepting the most important principles such as tolerable risk of error.

Nonetheless, lump sums and performance-based agreement require further clarification. The WG supports the introduction of lump sums only if an alternative option to apply with detailed budget is maintained. In this way, the applicant can choose the most effective option for the success of the project⁹.

The WG supports a performance-based scheme as well only if indicators suitable to civil society are used¹⁰. CONCORD in particular – the European Confederation of Relief and Development NGOs - would reject such a scheme unless the specificities of projects in developing countries and fragile states are taken into consideration, as detailed in Annex VI.

Our recommendations are divided in five groups:

- General issues
- Issues specifically related to indirect costs
- Issues specifically related to operating grants
- Tenders
- Other issues not requiring a formal change of the provisions

⁷ Cf. Annex II

⁸ Cf. Annex IV

⁹ Cf. Annex VI for more details on CONCORD position on lump sums

¹⁰ The Erasmus for Young Entrepreneurs can be considered as an example of a programme where the performance based assessment has been introduced but the indicators do not really capture the main objective of the programme itself, constraining the intermediate organisations' activities, and the effectiveness of the programme.

3.1. General Issues

3.1.1. In-kind contribution - co-financing (Art. 165.a. 2 and art. 172.a IR)

The issue of in-kind contributions is one of the top **concerns for CSOs** - frequently referred to as **a barrier to applying**. Broadly speaking in-kind contributions come in two forms:

- Voluntary and pro-bono work
- Goods and services given by third parties for free

These are the elements that make civil society unique. Volunteering and contributions in-kind are an added value that only the not-for-profit sector can leverage. Excluding these two contributions as eligible costs is a missed opportunity to tap into the **unique potential of the sector**, specifically in their capacity to mobilize groups of citizens to work in support of European values and foster donations in-kind to ensure the implementation of project objectives. In **times of financial crisis** we must make the best use of all available resources.

The present regulation (Article 165.a.2 IR) says that the Authorizing Officer can allow for the recognition of volunteers' work. However, practice shows officials are extremely reluctant to engage in this path. This is why in most calls for proposals, the items covered by in-kind contributions are "not considered as eligible cost". Officials do not do it because they do not have the concrete tools to measure the contribution in kind and establish the corresponding financial value.

In order to identify the best model for calculation of the financial value of such in-kind contributions, an advisory group

should be set up with the objective of making an operational proposal to DG Budget. The group should include European networks of volunteer organisations and civil society representatives.

The group should refer to the international standards that have been set up at the UN and ILO by the Civil Society Study Center (Johns Hopkins University). The practice of other institutional donors such as the French Development Agency and USAID can provide useful examples and recommendations as well¹¹. A pilot project could be launched in the European Year of Volunteering 2011.

The financial value of in kind contribution should be the same for all services (DGs) using a range of costs, to avoid every DG having to make its own list. Consistency reduces confusion and errors. A written statement by the donor could clarify the value of good and services given in kind, if requested by the official authority.

¹¹ See the guidelines of the French Development Agency (AFD) for co-financing NGOs' projects and programmes: they foresee the possibility to value 4 types of contribution: 1. temporary assignment of professional staff, 2. material contribution, 3. voluntary workers; 4. staff and material contribution from the local partner(s). For each case, a set of rules is defined. All in all, the total amount of valorisations can not exceed 25% of the total budget presented by the NGO. See also the US Government Office of Management and Budget Circular A-110 codified for USAID in 22 Code of Federal Regulations 226: article 226.23 indicates that all contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the criteria given in the regulations. Clause (d) discusses how to value volunteer services as well as donated supplies, equipment and property.

An appropriate recognition of contributions in kind could solve the problem of co-financing because it would acknowledge resources that civil society is capable of mobilizing for projects. For example, in Scotland and Wales, volunteering is accepted as co-financing in the European Social Fund¹².

To mark the start of the European Year of Volunteering in 2011, the new FR should "reverse the burden of the proof" and make it compulsory for authorizing officers to recognize the contribution of volunteers including expertise given on a pro-bono basis and sponsorship in kind (goods and services) as co-financing, unless inappropriate or unjustified.

It's understood that the Commission considers the lump sums and flat rates as the solution to the problem since co-financing is not required in those cases. However, CSOs are not in favour of replacing a detailed budget with lump sums and flat rates in every case. They ask for both options. The lump sums and flat rates work well with small projects but not really when a large budget is required. Therefore it is only a partial solution.

The present wording of Art. 165.2 IR should be amended as follows *"the OA responsible shall accept co-financing in kind unless he/she justifies why it's not considered necessary or appropriate"*.

3.1.2. Double ceiling (Art. 108.a FR)

Grants are expressed both as a maximum amount and as a maximum percentage and defined in the grant agreement as a

¹² Report on the Joint Hearing BUDG – CONT on "A sustainable review of the financial regulation – boosting Europe's progress 2020", 1st June 2010.

<http://www.europarl.europa.eu/activities/committees/hearingsCom.do?language=EN&body=CONT>

proportion of eligible costs. **The new text excludes the absolute amount but maintains the percentage (art.108 a), whereas this is precisely the one causing main problems.** As a matter of facts:

- It is rare that the costs actually incurred end up being the same as those estimated in the project proposal;
- In the current grant agreements, the percentage applied is calculated at the time of the signature on the basis of the amounts of the grant requested and the eligible costs. Most often, this ends up being lower than the maximum percentage allowed by the call for proposals (for example 54.78 % instead of 60 %); legally speaking, it does not correspond to any actual "will" of the parties, but is only the result of a calculation; it is to be noted that the IR does not require this calculation, but only that the maximum rate of funding is mentioned;
- It does not encourage cost effectiveness; beneficiaries who achieve the results of the project at a lower cost and/or despite receiving less external co-financing than originally foreseen (and having more volunteers to do the projects for example) will have their grant cut to match the percentage defined in the grant agreement.

The Authorising Officer should have the discretion to maintain the EU contribution depending on their understanding of the cause of the shortfall and its effect on the project achieving its objectives.

Solutions could include the production of a legal form if the partner organisation folds and the situation should be decided on a case by case basis. Member states and other donors, for instance the Office of the

Civil Society in the UK, define the ceiling as a total amount and not a percentage.

The Group recommend defining the grant only as a total amount. The present wording of Art. 108.a FR should be amended as follows “Grants may take any of the following forms: a) reimbursement of a fixed amount, b) lump sums and/or standard scale of unit costs c) Flat rate financing, d) Combination of the forms referred to points a), b) and c)”.

where the mistake has been done in “good faith”¹³. In the Financial regulation, the same principle should apply and the good intention of a CSO should be taken into consideration by the Commission, limiting the time for the audit.

There is no definition provided by the Commission and therefore the WG is asking to delete it or provide clear guidelines, as the new mechanism could be misinterpreted and misapplied causing unintended consequences.

3.1.3. Systemic error (Art. 53b FR and Art. 47.4 IR)

In the new text (Art 53.b FR and art 47.4 IR) the systemic error has been introduced.

Systemic refers to something that is spread throughout, system-wide, affecting a group or system such as a body, economy, market or society as a whole.

It is difficult to see how this applies to a series of project grants where there are different people working on the grants, often using different systems, over different time periods, even within the same organisation. Very few projects, if any, would require high volume transaction processing systems where this could most likely be applied.

The concern is that if misapplied, it leaves an organisation in a position where it is inappropriately assumed guilty, and having to prove its innocence or be liable for a significant loss of funds.

In any case the audits of a systemic error should be limited to a certain number of years backwards. Three years seems to be appropriate, as it is in Germany, where §195 Bürgerliches Gesetzbuch (BGB) applies. §195 BGB is a general rule for limitation of claim of a maximum three years backwards which covers all possible issues where there is no special rule and

3.1.4. Tolerable risk of error (Art. 28b FR)

It represents one of the most important innovations of the new text but requires further clarification on its practical implications to ensure that it is universally understood and can be usefully applied.

For instance, applicants are requested by the Commission to provide written confirmation of co-financing by sponsors before applying. Private sponsors are normally reluctant to commit unless the European grant is confirmed. On the other hand, it's easy to persuade a private sponsor once the grant is confirmed. Does tolerable risk of error implies that AO could allow organisations to apply for funding and fundraise for co-financing only once the grant is confirmed?

The WG is strongly convinced that the implications of the tolerable risk of error have to be clearly spelled out so CSOs can take full advantage and AO knows precisely when to apply it.

¹³ For example: The taxpayer paid VAT over the last years but did the calculation wrong. The intention was to pay VAT. The tax office finds out that he made a kind of systematic error: the limitation for claim is 3 years backwards.

3.2. Indirect costs (Art. 181.4 IR)

This issue is relevant for both project and operating grants as examined in the next two paragraphs.

3.2.1. Project grants

As CSOs normally work with project grants, any change in this area implies modifications for every funding applicant having an impact on hundred thousands of organizations.

The 7% cap on indirect expenses for implementing an EU grant does not allow, in the majority of cases, for CSOs to recover full overhead costs on the project. As a result, it negatively **affects the financial sustainability of CSOs.** It also prevents CSOs with smaller operational budgets applying for EU grants.

The 7% cap on the indirect (or administrative) expenses for implementing an EU project is lower than the actual overhead ratio for many CSOs. Since there is no way to compensate for these costs (they cannot be charged to the project) it results in an inevitable deficit for the project that the CSO undertakes.

In the UK the national survey on indirect costs (Surer Funding) undertaken by ACEVO (Association of Chief Executives of Voluntary Organisations) in 2005 proved that organisations incur in 15 – 20% indirect cost to deliver a public contract. This was acknowledged by government and a new system to calculate indirect cost was adopted for public funding: **Full Cost Recovery**¹⁴.

Following the survey, the Compact (the contract between Government and sector on how both work together to deliver services) now acknowledges the importance of full cost recovery and commits to include appropriate inclusion of

‘relevant overhead and administrative costs’, as well as those associated with volunteering’.

It is extremely counter-productive to have a financing scheme with a built-in loss for CSOs. A rule that produces a loss for CSOs not only undermines the organisations' financial sustainability and/or integrity, but it also has a negative impact on the quality of services they provide, and ultimately does not contribute to the well-being of civil society as a whole.

No justification for the 7% cap has been made available to civil society, if indeed any justification exists.

The Implementing Rules of the Financial Regulation already contain a provision that allows exceeding the 7% ceiling "by a reasoned decision of the Commission" [Art. 181.4 IR]. However, this provision lacks any further instructions or guidance as to how it should be carried out and is hardly implemented in practice; in fact, the large majority of projects under the current instruments limit administrative expenses chargeable to the project to 7%.

3.2.2. Operating grants

Recipient of operating grants are not allowed to claim indirect costs, even if they receive only a small operating grants in terms of percentage of their total expenditure, while new projects (not planned in the work programme) increase indirect costs beyond the overhead covered in the operating grant. Furthermore, the operating grant will be progressively reduced because of the degresseivity rule – which aims at making organisations independent from the

¹⁴ <http://www.fullcostrecovery.org.uk/>

Commission's support - but the organisation still won't be able to claim any indirect cost. This not only prevents organisations from becoming more independent but also undermines their sustainability.

We recommend that:

- a) **The generally applicable indirect cost ratio is set higher, raising the flat rate to a more realistic level, or range. A rate of 15-20% is the average cost of overheads incurred by an organisation when delivering a project.**
- b) **Beneficiaries of operating grants must be allowed to claim indirect costs for projects that are not included in the annual work plan submitted for the operating grant**
- c) The text would be therefore amended as follow: "The grant decision or agreement may authorize or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to **a rate of 15-20 %** of total eligible direct costs for the action. The **rate of 15-20 %** ceiling may be exceeded by reasoned decision of the Commission"
- d) The Implementing Rules elaborate on the procedures to determine when and how a different ratio can be applied.

3.3. Issue specifically related to operating grants

3.3.1. Non profit rule (Art. 109.3 FR and art. 165 IR)

Operating grants are available to an organisation which pursues an aim of general European interest. The grant goes towards running costs and can range from a few percent to being the core source of an organisation's funding.

The rule was made targeting grantees of project grants but generates unintended consequences for grantees of operating grants.

It is important to distinguish between "profit" that can be distributed amongst shareholders and which is not related to non-profit organisations, and "surplus" which can be generated by civil society organisations and is reinvested in the organisation as a contribution to the mission or stored in the reserves.

The WG recommend changing the non profit rule, which undermines the sustainability of partners, not allowing organizations to constitute a reserve at the end of any year and reinvesting to pursue their mission.

Grant recipients are not allowed to make a surplus at the end of each year. Combined with the grant as a maximum ceiling rule, the situation is somewhat paradoxical:

- If the grant recipient underspends its budget the EU recovers its proportion of the agreed funding;
- If a grant recipient receives extra funding from 3rd parties in a year and does not spend it in that year the monies are taken off them by the EU;

- If a grant recipient receives less co-financing than budgeted, the EU recovers funding proportionate to that shortfall;
- In summary, the grant recipient loses in either way, unless they spend precisely to budget and receive co-financing precisely to budget.

Not being able to build reserves means that the organisation has to borrow funds to cover its running costs without any certainty that it will be funded and be able to repay that debt. This would be illegal in many EU countries. Paradoxically, this system is meant to support organisations considered as key partners by the Commission with the objective of making them self-sustaining. Clearly, the current approach leads to the opposite consequences.

At present the non-profit principle impacts negatively on civil society organisations for the following reasons:

- The rule acts as a disincentive for organisations to look for extra funding as this would in many cases be automatically be deducted from EC grants;
- The rules undermine the capacity of organisations to maintain or constitute reserves. This affects their financial sustainability and goes against the objective of the EU to build or support sustainable organisations. It is also worth noting that some national laws (e.g. Belgium) impose the creation of reserves to guarantee the wage for a certain numbers of months for each member of the staff. These reserves are also essential to cover unexpected and unbudgeted changes in an organisation (e.g. delayed payments by the EC or non renewal of an operating grant).

Furthermore, the rule is in contradiction with some national legislation applicable to similar situations.

In **Germany** a surplus is allowed at the end of the year and a CSO can use it for the three following cases:

- Provisions to continue the organizations operation for a maximum of 6 months in the next financial year. Provision could only be build on costs which are contract related (e.g. salaries, office rent, and telephone) and not for e.g. travel cost.
- Reserves which are related to future investments (e.g. computer, furniture, and beamer) or for cost which will definitely (from your own perspective) occur in the future (e.g. renovation and moving of office). This is very important for organizations which own real estates. The reserves are not time limited and could be brought forward from year to year.
- Provisions based on contracts signed within the actual year but will be executed in the following year (e.g. contract signed in November to hire a conference venue for a conference taking place in June the following year)

In the **United Kingdom**, the government encourage CSOs to make a surplus and build reserves. Both the Charity Commission and Charity SORP stress the importance of having the right level of reserves – if they are too low then a charity's ability to carry out its core activities are put at risk, as is its solvency. A charity needs to ensure it is sustainable and has the capacity to continue to operate should it face unexpected funding difficulties. A recent study by the National Council for Voluntary Organisations (NCVO) demonstrated just how vulnerable many charities are with regard to reserves: Their research found that one third of charities have no reserves and that for those with reserves, this amounted - on average - to only one month's spend. Charities by nature aim to spend, rather than accumulate resources, thus allowing

them to retain a surplus is not likely to have a huge impact on EU finances (as underspends are not common) yet will be extremely beneficial to the charity.

In the **Netherlands** the guidelines developed by the Dutch civil society national fundraising body recommend organisations to keep up to 1.5% of annual budget and such a requirement has been included in the CBF certification. Such a label certifies the organisation is suitable to receive grants and donations. It is recognized by the government and used by accountants and auditors.

The working group has considered several solutions ranked as below:

1. The optimal solution would be **to exclude operating grants given to organisations pursuing a European general interest from the scope of the non profit rule: the list of 109.3 FR, excluding some grants from the scope of the non profit rule should be extended to "d) operating grants to organizations pursuing a European general interest", (provided that it has confirmed the non distribution of surplus, even indirectly capping salaries and bonuses as is done in the UK).**
2. An acceptable solution would be **to allow a certain level of surplus – de minimis rule - or to build reserves up to 3-6 months as in Germany for operating grant beneficiaries.** In the actual text of the FR **political parties** are allowed to carry over a surplus to the following year which can be used for its mission up to the end of the first quarter (art. 109 FR).
3. The last resort would be **to carry over the surplus with a break even over 5 years.**

3.4. Tenders (Art. 123, 126, 242 IR)

There is a need for further exploration of unique added value of CSOs in contract services by the EC, in order to assure a full recognition of CSOs' characteristics and permit CSOs to have positive economic effects on their budget.

Today, it is impossible for a non-profit organisation to contract a Commission service directly through public procurement: the low cost, incurred by this kind of organisation is considered an unfair competitive advantage. On the contrary, the WG is proposing an amendment on the art.123 of the IR, showing all the advantages presented by a non-profit organisation compared to a private company both in terms of costs and purposes. The WG's suggestion would be to list CSOs in the exceptional cases mentioned in the art.123, in order to avoid genuine competition for tenders.

The second issue is regarding the use of a negotiated procedure without prior publication of a contract notices for supply contract, as stated in art.126 IR. Also here, the list of cases that are allowed not to have a prior publications should be extended to non profit organizations or European networks of non-profit organizations based on voluntary work.

Lastly, art.242.1 IR states that contracting authorities that can use the negotiated procedure with a single tender in several cases. CSOs are already mentioned in the current list of cases that can apply the procedure, but the scope of the CSOs should be broader, including all the different types of non profit organizations.

3.5. Other issues not requiring a formal change of the provisions

The Group has added some more recommendations which are not directly related to the text of the FR and IR but go in the same direction to improve the process through simplification, efficiency and effectiveness.

3.5.1. Register/database of applicants

The Group recommends setting up a **register/database of applicants** so that CSOs do not have to submit the same documents, such as its legal status, every time they make an application. Such a tool would improve transparency and accountability, making public the CSOs who engage with the Commission. This would save time and unnecessary work for both the applicants and the Commission, being thus more efficient and also reducing risk.

The Commission has already developed a register of interest representatives¹⁵ and register for applicants of grants' applicants in external cooperation programmes called PADOR¹⁶ and could use those registers instead of setting up a new one. The Commission is also considering setting up a register for guaranteeing transparency and accountability of CSOs against antiterrorist infiltration. Hence one register/database could have different function decreasing administrative costs for both Commission and CSOs.

¹⁵

<https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en>

¹⁶

http://ec.europa.eu/europeaid/work/online-services/pador/index_en.htm

3.5.2. Consistency across services (DGs)

The Group underlined the need to tackle **the lack of consistency in the interpretation and application of the FR and IR across services** (DGS) therefore the WG has proposed an **assessment of the implementation of the FR and IR**. Such a situation would leave individual officials with the risk of choosing the right interpretation that leads them to take the most conservative view at the expense of innovation. Moreover, it creates unfair discrepancy for CSOs across services. For example, an application with a minor formal error would be directly disregarded on the basis of eligibility criteria by one DG, while other services – i.e. EACEA – would not exclude it, showing a supportive approach towards applicants.

3.5.3. Authorising Officer choice of modalities

In order to promote consistency across DGs and the Commission, the FR and IR should provide guidance including advice on modalities to be preferred in specific cases. For example Bank Guarantees are an inappropriate instrument that should only be used as a last resort. Leaving the decision open, without guidance, is more likely to lead to continuity of existing inappropriate practice than change future behaviour. While the more financial literate Authorising Officers may change, others are unlikely to do so as it gives the false

appearance of protecting them personally (as guardians of EU funds).

3.5.4. Timing of award (Art. 112 FR)

A good example where guidance would be required is when the Commission proposes that it can sign the grant agreement until 9 months (instead of 6) after the start of the beneficiary's budgetary year. This is highly disruptive and unsustainable for CSOs which normally don't have large reserves.

The procedures within the Commission should enable awards to be made prior to the start of the financial year; this is possible with the current rules provided that appropriations are foreseen in the Year 1 budget for the grants of the following Year.

3.5.5. Level of co-financing (Art. 108 FR and Art. 164.1.d.i IR)

Since the '90s, calls for applications have become more prescriptive; they look more like calls for tenders and leave less room for creativity and innovation in civil society. This leaves less room to develop projects that meet both the EU and co-funders individual objectives. **A high level of co-financing above 30% is therefore often inappropriate.**

The current **economic crisis** also offers an example of how the prevailing economic situation of Member States can cause problems for organisations when it comes to co-financing.

For example, the British government has closed down the regional development fund for lack of co-financing. Indeed, civil society organisations have reported substantial cuts in their budget this year, while at the same time they are witnessing an increase in demand for their services (e.g. food banks, shelters). Trying to

provide a solution, the new Coalition Government has placed emphasis on the importance of public-private partnerships. One of their key policies has been the 'Big Society'¹⁷ programme, which aims to support CSOs, social enterprises and voluntary groups in taking over and delivering public services with funding from both Government and the private sector. Although we are yet to see how the Big Society agenda and these partnerships will develop, in the current economic climate and in the context of wide public spending cuts, co-financing provides multiple funding streams. This is a valuable option when one funding source is no longer able to fund a project at the same rate it has previously.

In new Member States the situation is even more challenging as alternative sources of co-financing like private and corporate donations are scarce.

Therefore, there should be a **greater flexibility** on the level of co-funding when it comes to supporting national/local organizations which do not have easy access to funding. Not all civil society organizations across Europe are in the same position when it comes to co-funded projects. Civil society organisations from wealthier nations and those that are well established tend to have easier access to funds. The requested level of co-financing can therefore become **a factor of geographic discrimination.**

Co-financing should include **inflation correction** (especially in non euro zone) and **consider percentage as a range giving priority to the achievement of results of the project to the amount of co-financing raised**

17

<http://www.cabinetoffice.gov.uk/media/407789/building-big-society.pdf>

3.5.6. Auditing

Another concern is around the auditing requirements for EU funded projects in general. In short, many find them excessive and are a huge burden on the time and resources of a CSO.

The 65% Expenditure Coverage Ratio stipulated in the Terms of Reference for Expenditure Verification guidelines, i.e. an audit sample requirement to check 65% of transactions by value on each expenditure report submitted on EC grants, has been a huge strain on CSOs time. Requirements are even tougher if the exception rate (amount queried – due to, for example, quality of supporting documents, compliance etc) is higher than 10%. In these cases ECR is extended to 85%, with a minimum of 10% of every budget heading and sub-heading sampled. In our view this requirement is disproportionate and creates significant amounts of undue work.

Many CSOs have found that queries from EU auditors have related to the supporting documentation they have provided and a number of problems have been identified with the requirements: Firstly, the amount of paperwork that members have been expected to keep is huge – in some cases it is required that original documents are kept until 2025. Obtaining the correct paperwork can be problematic if you are operating in a difficult environment (say for example, an INGO operating in Afghanistan) where there is not the bureaucratic infrastructure in place. Problems also arise with documentation when charities are using money from more than one EU fund for a shared project. Despite the best efforts of the CSO, in some cases the supporting documentation

falls short of the EU auditors' strict requirements and money has to be repaid - which is obviously hugely detrimental to a CSO.

The policy makers might consider aiming at simplification, adopting the principle of subsidiarity: in this case, the cost-counting system and auditing rules of the country in which the leading applicant is resident are applied. This is already the case for the Common Agricultural Policy (CAP) budget and could be extended to other policy areas. Besides his/her national accounting rules, every contractor has to apply international accounting norms and standards, in case of cooperation with other companies/organizations. Therefore, a simplification of the current text would have three advantages:

- To permit the use of one single set of accounting reports for the European contract as for the rest of the activities of the contractor. This will allow a tremendous progress against fraud;
- To drastically reduce all the "special" European red tapes to general rules. This would imply clearer and more accessible rules for everybody, while the Parliament could have a deeper control on these issues;
- To introduce a possibility of arbitration between the contractor and the Commission on one side and the Commission and the auditing institutions on the other side. This would improve the current situation of uncertainty of the quality of financial management, carried on by the Commission.

4. Next steps

The WG is currently **approaching several Members of the European Parliament** (MEPs) in order to make its voice heard.

The WG suggests that a **roundtable** is organised, possibly in the EP, including cross party MEPs, European Union officials and representatives of civil society organizations. The main objective will be to involve additional stakeholders and keep the pressure high on the key actors, in order to address effectively the group's concerns.

A **parliamentary assessment** on the implementation of the FR and IR by the various services would be useful

ANNEX I

Article	Current text	New text or alternative solutions
FR		
28b	“The Legislative authority shall, in accordance with the procedure laid down in Article 322 of The Treaty on the Functioning of the European Union, decide on a level of tolerable risk of error at an appropriate aggregation of the budget.”	It requires further clarification on its practical implications to avoid officials ignore it.
53b	“The Commission may suspend payments to entities and persons referred to in paragraph 1, in particular when <i>systemic errors</i> which question the reliability of the internal control systems of the entity or person concerned or the legality and regularity of the underlying transactions are detected”.	There is no definition provided by the Commission and therefore the working group is asking for further clarifications, as the new mechanism could be misinterpreted and misapplied causing unintended consequences
108.a	“Grants may take any of the following forms: (a) reimbursement of a specified proportion of the eligible costs actually incurred”	An absolute amount should be maintained, not considering the proportion
109.3	“Grants may not have the purpose or effect of producing a profit for the beneficiary”	The WG recommends changing the non-profit rule, which undermines the sustainability of partners, not allowing organizations to constitute a reserve at the end of any year and reinvesting to pursue their mission
112	“An operating grant shall be awarded within six months after the start of the beneficiary's budgetary year.”	Successful application must be notified as soon as possible
113	“Unless otherwise specified in the basic act or in the financing decision for grants awarded under Article 49(6) point (d) with regard to bodies pursuing an objective of general European interest, when operating grants are	The WG would suggest to change the text as follows: “They shall be gradually decreased after the fourth year However they will be able to claim indirect costs when applying for project funding”

	renewed for a period exceeding four years, they shall be gradually decreased after the fourth year”	
IR		
47.4	“The outcomes of ex post controls shall be reviewed by the authorising officer by delegation at least annually to identify any potential systemic issues. He/she shall take measures to address those issues.”	There is no definition provided by the Commission and therefore the working group is asking for further clarifications, as the new mechanism could be misinterpreted and misapplied causing unintended consequences.
123.2	“In negotiated procedures and after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria. The number of candidates invited to tender must be sufficient to ensure genuine competition. The first and second subparagraphs shall not apply to: a) contracts involving very low values small amounts, as referred to in Article 129(3); b) contracts for legal services within the meaning of Annex IIB of Directive 2004/18/EC; c) contracts declared secret, as referred to in Article 126(1)(j).”	The group would suggest to add a point d) contract involving a non profit organization or a European network of non profit organizations based on voluntary work exposing costs of personnel in kind and pursuing policies and actions with the objective to promote sustainable development, contribute to poverty reduction, support economic modernization and strengthen small and medium size enterprises
126.1.g	“iv) in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;	The group would suggest to add to point g) “either from a non profit organization or a European network of non profit organizations based on voluntary work exposing costs of personnel in kind and pursuing policies and actions with the objective to promote sustainable development and investment, contribute to poverty reduction, support economic modernization and strengthen small and medium size enterprises”.
164.1.d.i	“Where the grant takes the form of a reimbursement of eligible costs, in the case referred to in point (a) of Article 108a(1) of the	Co-financing should include inflation correction (especially in non euro zone) and consider percentage as a range, giving priority to the achievement of results

	Financial Regulation their estimated amount and the maximum financing rate maximum rate of funding of those costs of the action”;	of the project to the amount of co-financing raised
165	“Where a profit is made, the Commission shall be entitled to recover the percentage of the annual profit corresponding to the Union Community contribution to the operating costs actually incurred by the beneficiary to carry out the action or work programme”	The WG recommends changing the non-profit rule, which undermines the sustainability of partners, not allowing organizations to constitute a reserve at the end of any year and reinvesting to pursue their mission
165.a.2	“The authorising officer responsible may accept in-kind contributions as co-financing in kind, if considered necessary or appropriate.”	“The AO responsible shall accept co-financing in kind unless he/she justifies why it’s not considered necessary or appropriate”.
172.a	The text doesn’t mention in-kind contribution as eligible costs	The text should mention in-kinds contribution as eligible costs
181.4	“The grant decision or agreement may authorise or impose, in the form of flat-rates, funding of the beneficiary’s indirect costs up to a maximum of 7 % of total eligible direct costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community Union budget.”	The generally applicable indirect cost ratio should be set higher, raising the flat rate to a more realistic level, or range. A rate of 15-20% is the average cost of overheads incurred by an organisation when delivering a project.
242.1.b	“For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases”. (...) “b) where the services are entrusted to public sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;”	The working group suggests to add to point 242.1.b: “CSO pursuing policies and actions with the objective to promote sustainable development and investment, contribute to poverty reduction, support economic modernization and strengthen small and medium size enterprises”

ANNEX II

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Final response to the public consultation of the review of the financial regulation from the Civil Society Working Group (Dec 2009)

<http://www.euclidnetwork.eu/resources.php/en/764/consultation-final-response-to-the-public-consultation-of-the-review-of-the-financial-regulation>

Final response to the public consultation of the review of the financial regulation from CONCORD, the Confederation of European NGOs for relief and development (Dec 2009)

http://ec.europa.eu/budget/library/consultations/FRconsult2009/contributions/O034_2009-12-17_Concord%20Belgium_en.pdf

Ombudsman's proposals (Dec 2009)

<http://www.ombudsman.europa.eu/resources/otherdocument.faces/en/4957/html.bookmark>

European Commission's proposal on the Financial Regulation applicable to the general budget of the European Union (28/05/2010)

http://ec.europa.eu/budget/library/documents/sound_fin_management/financial_regulation/comm_2010_260_en.pdf

European Commission's staff working document amending the detailed rules of implementation of the Financial Regulation (28/05/2010)

http://ec.europa.eu/budget/library/documents/sound_fin_management/financial_regulation/comm_2010_260_working_doc_en.pdf

ANNEX III

Members of the Civil Society Working Group within the Structured Dialogue Group

Position	Name	Organization	Country	Type	Email
Co-Chair	Filippo Addarii <i>Executive Director</i>	Euclid Network	UK	Network	Filippo.addarii@euclidnetwork.eu
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Co-Chair	Maurice Claassens <i>Organisation Development Coordinator</i>	SOLIDAR	BE	Network	Maurice@solidar.org
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Expert Observer	Thomas Heckeberg <i>Permanent Representative</i>	EUNET e.V.	DE	Network	heckeberg@european-net.org
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Member	Alina Mirabela Chisliac <i>Contact point Europe for Citizens Programme</i>	CIDEM / forum civique	FR	PEC/network	chisliac@cidem.org
Member	Ute Guder <i>Financial Manager</i>	Notre Europe	FR	Think Tank	uguder@notre-europe.eu
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Member	Margarete Neckerauer <i>Finance Officer</i>	Eur Akad Berlin	DE	Think tank	Margarete.Neckerauer@EAB-Berlin.EU

ANNEX IV

Assessment of Commission's proposal against WG's main recommendations

The table below shows a comparison between the civil society working group's main recommendations and the new text of the financial regulation. In the first column a traffic light system has been added, in order to understand if the comment proposed by the civil society working group has been taken on board (green), partially taken on board (yellow) or still has to be considered (red) by the new text.

Civil society working group		New text
<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>	1. Non-profit rule (Q4) WG: differentiation between surplus and profit and possibility for the organization to reinvest the surplus in the mission or to build reserves. This is one of the main concerns highlighted.	<p>Surplus can be reinvested "<i>before the end of the first quarter of this following year</i> (1525/2007 Art. 1, p.118)".</p> <p><u>BUT</u> this only applies to "<i>political parties at EU level</i>" – actually one of the options was to extend this rule...</p>
a) <input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>	2. a) Co-financing (double ceiling) and b) in kind contributions (Q2): WG: a) <i>co-financing</i> : highlight the issue of the double ceiling. The situation should be judged on a case by case basis and allow for more flexibility.	a) Co-financing: Art. 108 FR maintains as a form of grant "reimbursement of a specified proportion of the eligible costs actually incurred – which is precisely causing so many problems; and suppresses the maximum overall ceiling. It should be the contrary = maintain an absolute amount. Reference also in IR164.1.d.i.

<p>b)</p> <p><input type="radio"/></p> <p><input checked="" type="radio"/></p> <p><input type="radio"/></p>	<p>b) <i>In kind contributions:</i> the FR should make compulsory to recognize the contribution of volunteers including expenses given on a pro-bono basis and sponsorship</p>	<p>In general, more efficiency through new financial mechanism as Public Private Partnership. (p.17)</p> <p>b) Progress on in kind contribution; it is recognised (in the explanation) that the grant can represent 100% of eligible costs if co financing by beneficiary is provided in kind or through ineligible cost; in IR 165a.2 is clarified that AO may accept in kind as co-financing if necessary or appropriate</p>
<p>a)</p> <p><input type="radio"/></p> <p><input type="radio"/></p> <p><input checked="" type="radio"/></p> <p>b)</p> <p><input checked="" type="radio"/></p> <p><input type="radio"/></p> <p><input type="radio"/></p>	<p>3. a) Lump sums/flat rates and b) contribution to indirect costs (Q3): WG proposal: I) maintaining the option for organizations to choose between submitting a budget using lump-sum calculation or one based on real costs. II) Raising the ceiling at market standards. III) basing flat rates and lump sum on outputs and not budget</p>	<p>a) Art 109: Lump sum: It will be simplified. The maximum threshold will be abolished and the EC will set up the amounts depending on the nature of the programme. Beneficiaries will be paid lump sums to undertake specific tasks.</p> <p>b) No reference to indirect costs.</p>
<p><input type="radio"/></p> <p><input checked="" type="radio"/></p> <p><input type="radio"/></p>	<p>4. Bank guarantee (Q9): WG: discarding the bank guarantee.</p>	<p>Progress on bank guarantees: 118.2 FR is deleted = it is no longer required for the authorizing officer to require a bank guarantee in certain cases specified in the IR ⇔ this introduces more room for appreciation by AO.</p> <p>Introduced the concept of tolerable risk of error.</p>
<p><input type="radio"/></p> <p><input checked="" type="radio"/></p> <p><input type="radio"/></p>	<p>5. Operating grants (Q6): WG proposal: beneficiaries of operating grants must be allowed to claim indirect costs for projects which aren't included in the action plan submitted for the operating grant</p>	<p>FR113: Gradually decreased, BUT only after the 4th year</p>

<input type="radio"/> <input type="radio"/> <input checked="" type="radio"/>	6. Pre-financing (Q8): WG “the requirement to pay interest on pre-financing should be removed”	Art.81+ (10): The roles on pre-financing should be simplified. There should no longer be an obligation to generate interest on pre-financing and to recover such interest.
<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>	7. Application procedure (Q11): WG: needs for simplification	No clear reference to simplification, even though the principle is repeated in the text.
<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>	8. Low value grants (Q5): WG: threshold of 150,000 EUR for low grants and a 20,000 for very low value	The award of low value grants should be made easier, by removing excessive administrative requirements and increasing the current threshold (from EUR 25,000 to EUR 50,000)
<input type="radio"/> <input type="radio"/> <input checked="" type="radio"/>	9. Cascading grants (Q7): WG: simplification. It is important to link the maximum amount of sub grants with the total budget per project	Art. 120: Rules have proven too strict and should be eased in order to allow a beneficiary to redistribute its grant by way of subsidies to third parties.
<input type="radio"/> <input type="radio"/> <input type="radio"/>	10.Level of thresholds (Q10): not discussed by WG	-
<input checked="" type="radio"/> <input type="radio"/> <input type="radio"/>	11.Calls (Q1): WG: centralised database for calls	No reference
<input type="radio"/> <input checked="" type="radio"/> <input type="radio"/>	12.Exchange rate	Not mentioned, but might be included in the tolerable risk of error

ANNEX V

Members of the Structured Dialogue Group

- [Active Citizenship Network](#)
- [AEDH – Association Européenne pour la défense des Droits de l'Homme](#)[Aktion Sühnezeichen Friedensdienste / Action Reconciliation Services for Peace](#)
- [Assembly of European Regions \(AER\)](#)
- [Association Jean Monnet](#)
- [Association of the local democracy agencies \(ALDA\)](#)
- [Association des Organisations de service volontaire \(AVSO\)](#)
- [Autonomia Foundation](#)
- [Beth Shalom Ltd \(The Holocaust Centre\)](#)
- [Cafe Babel](#)
- [European Council of associations of general interests \(CEDAG\)](#)
- [Council of European Municipalities and Regions \(CEMR-CCRE\)](#)
- [Centre des Etudes Européennes de Strasbourg \(CEES-ENA\)](#)
- [CEJI – Centre Européen Juif d'information](#)
- [Centre for Economic Policy Research \(CEPR\)](#)
- [Centre for European Policy Studies \(CEPS\)](#)
- [Centre Européen Robert Schuman \(CERS\)](#)
- [Centro Europa Scuola Educazione e Società \(CESES\)](#)
- [Centre Européen du Volontariat \(CEV\)](#)
- [Civisme et Démocratie \(CIDEM\)](#)
- [Confédération des Organisations Familiales de l'Union européenne \(COFACE\).](#)
- [Community Service Volunteers \(CSV\)](#)
- [Confrontations Europe](#)
- [EUCIS - LLL Platform](#)
- [Euclid network](#)
- [Eur@dionantes](#)
- [EUROCITIES](#)
- [Europäische ARGE Landentwicklung und Dorferneuerung](#)
- [Europäische Akademie Berlin](#)
- [European Alternatives](#)
- [European Association for Viewers Interests \(EAVI\)](#)
- [European Citizen Action Service \(ECAS\)](#)
- [European Council on Refugees and Exiles \(ECRE\)](#)
- [European Movement international \(EMI\)](#)
- [European Network for Education and Training \(EUNET\)](#)
- [European non-governmental sports organisation \(ENGSO\)](#)
- [Eŭropa Esperanto Unio \(EEU\)](#)
- [European Paralympics Committee](#)
- [European Policy Centre \(EPC\)](#)

- [European trade union committee for education \(ETUCE – CSEE\)](#)
- [European trade union confederation \(ETUC\)](#)
- [EUROPEUM European Institute for European Policy](#)
- [EUSTORY](#)
- [Fédération Européenne de Solidarités de Proximité \(FESP\)](#)
- [FONDACA – Active Citizenship Foundation](#)
- [Fondation Robert Schuman](#)
- [Fondation Roi Baudouin](#)
- [Fondation pour les Générations Futures](#)
- [Forum Civique Européen](#)
- [Fundacion para el Analisis y los Estudios Sociales \(FAES\)](#)
- [Foundation Institute of Public Affairs \(ISP\)](#)
- [Friends of Europe](#)
- [Future of Europe Association- Europa Jovoje Egyesulet](#)
- [Heinrich Böll-Stiftung](#)
- [The Intercultural Communication and Leadership School \(ICLS \)](#)
- [Institut für Europäische Politik \(IEP\)](#)
- [Young European Federalists \(JEF Europe\)](#)
- [Istituto di Sociologia Internazionale di Gorizia \(ISIG\)](#)
- [Institute of Public Affairs \(ISP\)](#)
- [Institute fur den Donauraum und Mitteleuropa \(IDM\)](#)
- [Libertarian Research and Education Trust \(Statewatch\)](#)
- [Mediterranean Institute of Gender Studies \(MIGS\)](#)
- [Network of European Foundations for Innovative Cooperation \(NEF\)](#)
- [Netzwerk Migration in Europa e.V./Network Migration in Europe](#)
- [Notre Europe](#)
- [Pour la Solidarité](#)
- [Polska Fundacja im Roberta Schumana](#)
- [QeC- Quartiers en crise](#)
- [Research Institute for Linguistics of the Hungarian Academy of sciences](#)
- [Service Civil International in Europe](#)
- [Social Platform \(Platform of European Social NGOs\)](#)
- [SOLIDAR](#)
- [The Lisbon Council of Economic Competitiveness and social renewal](#)
- [Trans European Policy Studies Association \(TEPSA\)](#)
- [Union of European Federalists \(UEF\)](#)
- **Other CSOs which have endorsed this policy briefing**
 - [CONCORD](#)
 - [CFDG](#)

ANNEX VI

CONCORD's position on lump sums and performance-based agreements

1. Lump sums:

Under the generic term of lump sum there are two different categories: lump sums and flat rates, standard scale of unit costs being a subcategory of lump sums (per category of cost and per unit). This scale of unit costs is the novelty of the revision.

To any of them the co-financing and the non-profit rules apply.

Profit shall only be verified ex-ante when determining the amount of the lump sums. In principle, ex-post control cannot challenge the amounts of lump sums agreed after the signature of the agreement / decision.

The simplification that a lump sum system provides, in theory, is undeniable in the management of grants. Nevertheless, attention has to be paid to:

- The establishment of the amounts of lump sums and eventually the assessment and adjustment of those amounts can be complicated and entail an important administrative burden both for the EU and the beneficiary. This would undermine the objective of simplification.
- Actual costs might not be fully covered by the lump sums; this would cause financial difficulties for the beneficiary.
- Profit could be an outcome of the lump sums; this goes against the principle of non-profit.
- Application to similar non-funded projects would not be possible: other donors do not admit lump sums.
- The amounts at the budgeting stage being estimates, the possibility of amending the amounts of lump sums should be preserved. This could entail a supplementary administrative burden in order to calculate the adjusted amounts.
- The system to prove and verify that the generating event has occurred can be complicated; this would completely undermine the objective of simplification.

Consequently, **CONCORD members do not support the introduction of lump sum charging in the direct costs of an action. We recommend that the EC maintain the current system of reporting against actual incurred costs.**

On this question, it is certainly worth noting that DG ECHO moved away from such a system in 2003. This system was very difficult to administer and to monitor and audit and was unpopular both for the donor and the partners. Despite many attempts to ensure all costs were covered whilst maintaining a system of lump sums, it was eventually abandoned in favour of a full cost recovery model.

Some NGOs nevertheless have internal policies for accounting certain type of costs according to the **average of actual costs**, like for instance average of actual costs for expatriate staff. These methodologies are based on actual costs which can be easily traced and eventually audited and should be acceptable. Those methodologies clearly simplify the management of grants, while ensuring elaboration of realistic budget based on actual costs. Our position on lump sum costs does not preclude this practice.

2. Performance-based agreements:

Art. 108.1 FR: "Grants are direct financial contributions, by way of donation, from the budget in order to finance (...) an action intended to help achieve an objective forming part of a European Union policy; (...)"

Therefore, the framework is the grant for the implementation of a project by the beneficiary which is a contribution to the achievement of a larger objective being part of an EU policy.

When it comes to external aid projects, we are in the case of obligations of means, not of obligations of results.

An obligation of means implies an engagement to do all that is possible in order to fulfil the objective or to achieve the expected result, but with no guarantee of actual achievement. Which means that the beneficiary of a grant cannot be held responsible of the failure to fulfil the objective or to achieve the result per se; he can be held responsible of not having done all his possible.

An obligation of results imposes to achieve a certain result and the failure to fulfil the objective or to achieve the result entails a sanction or penalty except in cases of force majeure.

Taking this into consideration, a performance based system should be designed in order to allow to focus, in the assessment of proposals, on the appropriateness of the designed action as a contribution to the objective being part of an EU policy rather than on the inputs and their cost; it should also allow to focus, when monitoring activities and in the assessment of reports, on the coherence between the proposed action and its actual implementation, on how obstacles to the implementation and changing circumstances have been dealt with and on lessons learnt, rather than on arithmetic measure of level of achievement of results and inputs actually used and their cost. It should rather be a flexible approach permitting the analysis of lessons learnt in order to adjust and improve strategies.

The performance based system proposed remains a cost based one by combining the cost eligibility system with the arithmetic measure of level of results achieved in order to calculate the final EU's financial contribution, not taking into consideration the context and qualitative aspects, assessing the "success" of an action, not through a wide overview of its implementation, but on each result individually and separately considered.

Cost coverage, based on the expected outputs, is not a realistic option for grants. It exposes the grant beneficiaries to major disallowances if the objectives are not achieved, which is sometimes subjective and open to interpretation, and often hard to measure in "softer" development projects.

It could lead NGOs to back off from difficult work in difficult places, where it is exactly most needed. Additionally, failure to implement objectives is often the result of extraneous issues, rather than directly an issue with project design and implementation.

Performance based agreements are not realistic in particular if one considers:

- the success of an action is not the arithmetical sum of the degree of achievement of individual outputs/results;
- how would the specific circumstances in which development and humanitarian projects are implemented be taken into consideration;
- costs at the proposal stage are estimations and modifications can occur;
- what would happen if actual outputs are higher than the expected ones?

Related Recommendations

The key issue it seems, is to find a system that allows, at the same time simplicity in budget management (which is the main advantage of a lumpsum system) while assuring that all the NGO's costs are covered and that the donor is not paying for costs that do not exist. We believe a system that allows for real cost charging but reduces the administrative burden in reporting those costs, would be the most progressive policy change.

The main problem with grant management is not the calculation and justification of actual costs, but rather all the administrative burden requested in particular with intermediate and final reports (reporting by currency, reporting by units and unit costs, provision of a list of expenses that is not in practice only a mere copy of the booking accounts of the organisation but that needs to be classified according to the budget headings of the EuropeAid budget template, etc.).

The majority of NGOs for instance do not have financial systems which can track units and unit costs. And some costs cannot be broken into or accurately measured by unit # (i.e., capacity building), or some budget lines may incorporate different types of costs (i.e., training). When budgeting, applicant organisations are able to give indicative figures, for information purpose. But unit costs vary and for reporting purpose, the focus should be on total costs for each budget line and not on unit costs and number of unit. Any significant numerical information related to activities will already be reported in the narrative information.

So rather than performance-based arrangements, simplification and reduction of the administrative burden, in particular for financial reporting (while keeping the audit requirements) would ease the process of managing grants.