

CONCORD's position on the revision of the Financial Regulation

May 27th 2016

The structure of the rules and regulations

In terms of the European Commission's suggestion of "a single rulebook", reducing the number of documents is generally a positive step. However, for the members of CONCORD, few come directly into contact with the Financial Regulation. For the majority, the important reference is the PRAG. So irrespective of the format of the Financial Regulation/ Rules of Application:

- The principle of less rules and more clarity should be applied also to the PRAG, and a continued close and ongoing dialogue between the EU institutions and civil society on the PRAG is important and appreciated.
- Regular training of all staff programming and managing EC funds (e.g. in EU delegations) in application of these regulations and rules should be ensured across the globe.

Trust funds and flexible mechanisms

For CONCORD the issue of utmost importance if the Financial Regulation opens up for the use of trust funds also in internal action is that any flexible mechanisms still have safeguards to guarantee that ODA will not be subject to the risk of being diverted from development objectives and mixed with funds for internal action. The tendency of EU member states in recent years to increasingly divert ODA to fund refugee costs within Europe is detrimental to the global fight against poverty. Europe has the means to guarantee the basic human rights of people forced to flee their homes, without having to use funds earmarked for people living in poverty around the world. Irrespective of how the flexibility mechanisms are designed, there are important issues to consider:

- Avoid the risk to advance the security and border control agenda at the expense of development cooperation. The objectives of any action funded with ODA must clearly remain in line with EU obligations to ensure that development aid remains focused on alleviating poverty, and, where humanitarian funding and action is implied, also to protect and uphold the humanitarian principles.
- Need to respect country and regional ownership and ensure that partner countries, including national and regional civil society are consulted on how funds from different geographic and thematic instruments will be channelled through trust funds and other flexible options/ reserves. Consultations can also include outcomes of EU civil society roadmap discussions.

- More flexible funding delivery mechanisms may affect the transparency of award decisions negatively. To counteract this all trust funds or reserves should have clear pre-agreed guidelines and procedures for making information public and transparent.

Transparency of programming and information available on funding opportunities

CSOs have repeatedly reported that it is a challenge to find clear and structured information on planned calls for proposals. An improvement in the transparency of information on programming and upcoming calls for proposals would mean a substantial improvement of the efficiency of the funding relationship between the EU and civil society. It would save the time and resources of potential applicants and improve the structuring of work, thus also benefitting the EU by making potential applicants more effective partners. Therefore we would like to suggest the publication of the following:

- In addition to have the AAPs published sufficiently in advance, it would be helpful to have the priorities of thematic calls for proposals published already in the AAPs, along with the countries and amounts. Consultation with CSOs on those priorities remains a crucial process.
- Linked to the above, it would be useful to have an up to date space where the MIPs, NIPs/RIPs and AAPs are published. Additionally, whenever possible, the draft documents should be made publicly available to civil society.
- A list of forecast and published calls for proposals (as used to be published on the DEVCO website until 2013).
- A list of the selected proposals publicly available on the DEVCO website (similar to the grant tables published by ECHO). While it is recognized that several tools have been developed (EU Aid Explorer, etc.), those are not always up to date and user-friendly.
- A list of forecasts and the possibility of tracking of published calls for proposals under indirect management on the DEVCO website (for instance where EU funded actions by UN agencies includes calls for proposals).
- EU delegations should update their websites with all the recent documents and publish local call for proposals in the “news” section where it is easily accessible. EU delegations should also ensure that partner country-led calls for proposals, e.g. under the EDF, are published on the global website.

Convergence of rules between grants, other contracts and financial instruments

Regarding the Commission’s question on the increased convergence of rules, simplification is generally positive, as long as it does not muddle the lines between the purposes of the different ways of providing funding. Grants have a different purpose and a different entry point than procurements or financial instruments do. Grants have a sense of ownership that

is missing from the other instruments. There is a distinct risk when the rules are made more easily interchangeable that the perception of EU staff of the different instruments and the different stakeholders could be perceived as more interchangeable too.

- Any changes made to make rules more convergent should be analysed carefully to ensure that they do not affect negatively the right of initiative and ownership of grant beneficiaries.

Simplified forms of cost reimbursement

We would like to see more detailed look at the experiences of grant beneficiaries and EU staff in other DG's in recent years to see if this actually does reduce administration in reality and if NGOs are willing and able to work more with lump sums. What is the evidence that this mechanism in practice leads to simplification? For many CSOs full cost recovery remains the key, and the 'safe' option for many NGOs remains reporting against actual incurred costs.

Our experience is that reporting against lump sums/flat rates is not necessarily perceived as being less burdensome than reporting on actual incurred costs. In theory it simplifies but each Contracting Authority reserves the right to request supporting evidence of expenditure so in spite of the investment to put in place a system that responds to donor requirements and negotiate it with say an EU Delegation, we may end up having to prove more than the procedure in place the real costs behind it. Also, the systems for internal control of most CSOs require proof of actual costs, meaning that regardless of whether the EU accepts reporting with simplified costs most organisations would need to apply their established standards of financial management, meaning no significant simplification. Without full understanding, confidence and tried and tested experience – we may find NGOs continue to shy away from this option. Moving forward, the EU should:

- Measure to increase confidence that lump sum payments will not lead to losses.
- Ensure that lump sums/flat rates/unit costs do in fact cover the real costs.
- Accept NGOs 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.
- Ensure that EU delegations do not force grant beneficiaries or potential pre-selected beneficiaries to apply lumpsums against their will.

On the issue of simplified cost options we would also like to emphasize that simplified cost options are not the only and not necessarily the most effective way of simplifying rules and procedures. There are many other requirements that could be changed which would mean a significantly eased burden for both grant beneficiaries and the EU:

- Simplification of the grant application and selection procedures, uniformity of approach and transparency on the process would relieve substantial administrative burden from CSOs – especially smaller ones.

- Simplification on the rules on VAT, nationality and origin, supporting documents, etc. are other examples of simplifications which we recommend to explore.

The 7% flat rate for indirect costs is considered insufficient to meet all of the costs associated with delivering and supporting programmes. Non-profit organisations need to invest in the same infrastructure and overheads as other organisations if they are to succeed. Setting a cap does not reflect the true costs of operation. Donors with approaches like USAID with the NICRA (Negotiated Indirect Cost Rate) and DFID CHASE with the NPAC (Non-Project Attributable Costs) allow organisations to be transparent and receive the full costs associated with the project. If a cap is necessary for administrative streamlining, then 7% is too low. The UK organisations Bond and Mango undertook the first European benchmarking studies of NGO costs in order to get a true picture of the costs of running donor funded projects. All NGOs are different, with studies showing that smaller organisations need higher rates than larger organisations, but a rate of 12% would be much closer to the average amount that NGOs need to cover their central support costs.

- We suggest exploring new models for full cost recovery of overhead costs.
- If a flat rate is applied, we suggest increasing the flat rate to at least 12%.

Payment by results contracts

In the UK, payments by results contracts have been implemented in domestic as well as international government contracting. It involves suppliers being paid by donors only upon the verified achievement of agreed results. Academic proponents of PBR emphasise a focus on outcome-level results, while donors may also include outputs and processes in their definitions of results. For projects aiming at long-term complex changes or working in adverse contexts, a PbR model may be inadvisable. For specific types of projects or results there may be potential benefits for performance measurement, accountability and risk-transfer, although the research undertaken to date is limited. PbR is a relatively new aid mechanism with a limited evidence base, but which brings with it a heavy burden of design for the donor in order to avoid perverse incentives, as well as high demands for monitoring and verification. For non-profit suppliers such as NGOs, it carries potentially high levels of financial risk, and therefore few agencies are able to undertake these types of programmes. We recommend to:

- Proceed with caution, and not introduce a Payment by Results contract model until all of the implications of this has been thoroughly analysed and due consideration has been given to the amount of time and administrative burden for the EU which is associated with this model. To assess the complexity of this model, please refer to DFID's guidance for designing PbR programmes.
- If a PbR model should be introduced, ensure that enough time and resources are invested in preparing EU staff for decision making on when PBR should be used or not, and for designing PbR contracts that do not distort the incentives of stakeholders in development programmes.
- If a PbR model is introduced for grants, ensure that this is done in a way that respects the different nature of grant contracts compared to the relationship with



European NGO confederation for relief and development

contractors. Grant beneficiaries own their initiatives, and are partners in creating and co-funding the development actions.

