

## WORKING GROUP ON PREPARATION OF ENI CBC IMPLEMENTING RULES

Meeting on 27 September 2012

### Minutes

**Location: DG Development and Cooperation – EuropeAid, Rue Science 15, meeting room Nyerere**

#### **General Framework:**

The meeting was chaired by Ms Bodil Person (DEVCO F3) explaining that this is the 2<sup>nd</sup> informal working group session aiming at discussing draft articles of the CBC Implementing Rules (IR) for the new generation of CBC Programmes.

At the start of the meeting, the participants were asked on possible comments on the minutes from the previous working group meeting held on 28.06.2012. No comments were made; therefore the minutes were adopted.

DEVCO presented the state of play regarding the process of drafting the Implementing Rules (IR) for the next generation of CBC. It was stressed that DEVCO is paying high attention to complementarity and coordination with the relevant provisions of DG REGIO (ETC) and DG ELARG (IPA). Due to the fact that these provisions are not yet stabilised (discussions at the level in the Council and Parliament for ETC and a need to develop provisions in delegated acts, in the case of both ETC and IPA CBC), some chapters of the DEVCO CBC IR are still to be drafted pending the results of the coordination with DG REGIO and DG ELARG.

After the introductory remarks concrete parts of the draft implementing rules – i.e. "Fiches" were discussed. The "Fiches" - as well as the Interact non-paper on challenges related to application of shared management – had been submitted to participants prior to the meeting.

The subsequent discussion can be summarised as follows:

#### **Fiche 1 - General framework for Implementation:**

Finland: Will the IT systems be joint for the whole CBC or different programme by programme? DEVCO responded that, in general, the DG REGIO CBC-wide platform will be used as an example to follow but DEVCO will not intervene into IT systems between the managing authorities (MA) and project beneficiaries.

France on the Article 4(e)(x): What would Commissions' financial liability be in relation to recoveries from partner countries? DEVCO responded that this issue will be explained more in detail within the article on recovery and in line with ETC rules.

Poland inquired whether the Environmental Impact Assessment will be required both at the programme and project level. DEVCO confirmed and added that the requirements are addressed more in detail in the paragraph 5 2 (c).

Finland further inquired on the nature of Financing Agreements (FA) especially in relation to Russia. DEVCO highlighted that the CBC IR will be transposed through FA and in case of Russia the FA will be named differently. In case of programmes where co-financing is transferred to the JMAs all participating countries shall sign the FAs.

Italy: A deadline should be put for signing the FA.

DEVCO: This will not be possible as ENI stipulates that partner countries can join the programme any time and sign the FA (Article 10.9).

The Estonian representative questioned whether there should not be a deadline for the Commission to adopt the Joint Operational Programmes (JOPs). DEVCO experts responded that there is no deadline as the intention is to leave some room for flexibility. DEVCO also explained that JOP adoption (inter-service consultation plus Commission's decision) takes approximately six (6) months.

In relation to Article 4 (c) (i,ii) the Romanian representative questioned whether it is necessary to outline within the programme the specific set of related measures. In the opinion of Romanian representative it is not necessary as measures are too detailed. DEVCO disagreed with this position stressing that measures should be defined directly in relation to particular Programme priorities and in this regard they are still relatively broad.

The Romanian representative questioned how detailed the "information and communication plan" needs to be. It suggested that due to difficulty to draw a detailed communication plan at the beginning of the programme it should be an "indicative" plan. DEVCO agreed and will add the word "indicative" in the IR.

Romania on 4 (e)(x): The potential financial corrections should not be imposed only by the JMAs and Commission but also by audits. DEVCO stressed that any conclusions of audits shall be "taken on board" by the JMAs and Commission but the auditors themselves cannot impose requests/corrections on the programme. However, DEVCO agreed that this issue will require further clarifications and will further analyse it and reflect it in the IRs. In relation to "audit authority" and "body" or "bodies" it was agreed that the wording "responsible for carrying out audit tasks" will be replaced by "responsible" only. In this context DEVCO further stressed their intention to stay to the greatest extent possible aligned with the ETC rules currently being drafted.

The Finnish representatives questioned whether establishment of Joint Technical Secretariats (JTS) will be a requirement. DEVCO outlined that the intention is to leave this more with the programmes and this should not be an obligation for the programmes.

The French delegation stressed that the role of the national contact points (where existing) should be specified in the IR. DEVCO responded that programmes may detail the role of NCPs in the Description of Management and Control Systems, if they wish so. No requirements in this regard are foreseen in the IR.

"Direct Award": A question was raised whether the indicative list of projects to be selected through direct award procedure, which should be submitted within the Programme document, would mean that Commission approves these projects when approving the Programme document. DG DEVCO

clarified that this will not be the case. The projects to be submitted via direct award will still have to undergo the approval procedure and internal consultations within the Commission.

The Romanian representative questioned the obligation of the Programmes to include a description of mechanisms ensuring coordination between the programme and other Union and national funding instruments (i.e. preventing double-funding). They argued that it is impossible for the programme to ensure with 100% accuracy that double-funding is prevented. DEVCO representatives stressed that a margin of error is always possible but that programme bodies are expected to demonstrate that they will conduct the maximum possible consultations (e.g. with national governments, relevant stakeholders, the EC, etc.) to avoid double - funding. This process should be convincingly described in the Programme document.

### **Fiche 2 – Co-financing:**

Estonia asked to clarify the wording used to say that the EU will finance up to 90% of programmes' eligible costs. DEVCO explained that its intention was to maintain the same co-financing principles for projects as the ones that are currently set up in most of the programmes' guidelines of the calls for proposals, i.e. "A grant shall not exceed 90 % of the total eligible costs of the action." The Fiche wording has been modified accordingly. For the sake of clarity DEVCO has prepared an example showing how the mechanism works (see the Attachment 2)

The Italian delegation requested more detailed explanation on how the ineligible expenditure will be calculated. DEVCO confirmed that the level of co-financing will be examined at the programme level and not at the TA or project level.

Romania remarked that, at times, national rules pose constraints to the transfer of funds in concept of co-financing from participating countries to JMAs.

### **Fiche 3 – Projects:**

France: Why has the original request to take into account national and regional policies of participating countries been removed from the draft Implementing Rules? DG DEVCO: The reasons are political as the participating countries policies might not in all cases be fully compatible with the EC/EU policies.

The Finnish delegates raised a question whether also partners outside the eligible areas can be included in the implementation of CBC projects provided that their expertise is unique and they are clearly adding value to the project (e.g. by knowledge transfer). DEVCO indicated that, normally, the partners should come from the programme eligible areas and a knowledge transfer *per se* is not a CBC characteristic objective. In this context DEVCO will further redraft the section "Nature of Support" and other relevant parts in the Implementing Rules (e.g. sections on Projects and Beneficiaries).

The Polish delegation sought a clarification on the IR request to provide a detailed description of the capacity building component for projects primarily consisting of infrastructure. DEVCO explained that it is not a characteristic objective of CBC to implement 'purely' infrastructure projects. For strengthening sustainable cooperation across the border the capacity of the stakeholders shall be

increased in particular at the levels of regional administration but also civil society and people to people contacts.

The Bulgarian and Finnish experts inquired why the Commission should give a prior approval for the direct award of projects. DEVCO responded that like the EU member states (MS) and partner countries are responsible for their tax payers' funds, the Commission is responsible for the execution of the EU budget. Therefore, the Commission retains an influence on direct award procedure as these projects are not selected through standard calls for proposals and often have larger budgets than standard projects.

The Romanian representative expressed concerns about the obligation on the JMAs to avoid double-funding and duplication of actions and sought Commission's advice on how to perform this duty. DEVCO clarified that the JMAs have to take measures to minimise the risk of double funding (including consulting the Commission, as it happens now) to the extent possible. In this respect, Interact ENPI added that double-funding may happen both within the ENI CBC instrument (actions funded under different CBC programmes) and with other territorial cooperation instruments.

The Bulgarian representative also sought confirmation that the 30% limit on the budget to be spent by direct award applies irrespective of whether funds are used to support infrastructure or "soft" projects. DEVCO confirmed.

The Estonian delegate expressed doubts about the need to detail project content in the IR. DEVCO explained that it is necessary to set minimum requirements in the IR as the use of PraG will no longer be compulsory.

The Lithuanian representative questioned the necessity to submit logical frameworks within the projects' applications. DEVCO responded that logical frameworks are basic and internationally recognised project design and management tools. Improving their quality becomes even more important in a situation when PraG will not be obligatory anymore.

#### **Fiche 4 – Technical Assistance (TA):**

It was stressed by DEVCO that in the current programmes the TA can be used for the preparation of the next generation of CBC. The Romanian delegation requested that also in case of audit the cooperation of JMAs with audit bodies should be covered by TA. DEVCO responded that this is not a common practice - the capacity of JMAs to cooperate with audits (e.g. providing requested information both verbally or in written) is one of the basic capacity prerequisites to perform as a management authority.

#### **Fiche 5 – Beneficiaries:**

Estonia: To what extent it is possible for the lead partner to ensure that the project partners receive the total amount of the grant as quickly as possible and in full? According to Estonian representatives in some cases withholding of funds could be a solution if the performance of project partners is weak. In reaction on this remark DEVCO agreed to further review the section 3(b).

Romanian delegation challenged that "natural person" (i.e. a physical person) should be eligible as a beneficiary. DEVCO recognised that this issue needs to be further reviewed.

#### **Fiche 6 – Period of execution:**

Lithuania asked to extend the period of implementation for one additional year, even if closure is limited to one year. This would avoid reviewing CBC IR as it happened with ENPI CBC IR.

Taking on board lessons learned within the current CBC framework DEVCO has developed - in the Article 12 (2) - the possibility of an early termination of the programme (where the programme cannot, *inter alia*, be implemented owing to problems arising in relations between participating countries). However, at the moment this article lacks backing in the current draft ENI regulation. In this regard DEVCO asked MS to support the creation of legal basis for this IR Article in the draft ENI. In the current ENPI regulation this issue is covered by Article 9/10 d) and it should be introduced in the ENI Regulation as Article 10(13)(d).

#### **Fiche 7 – Payments:**

The Finnish representative inquired who will be the authorising officer in case of interruption of payments. DEVCO confirmed that it would be the Director in DEVCO. France representatives suggested that in the article "Interruption of the payment", the second paragraph requesting a description of reasons for interruption (to be passed to MS and JMAs) should refer to the previous paragraph where the reasons are described (i.e. adding "based on the elements described in the paragraph above"). The Italian delegates requested a more detailed description of "common rules for payment". It was requested to foresee a specific provision in case the national legislation would not be compatible with the obligation of a dedicated bank account to the programme. DEVCO responded that they will be submitted in writing.

EEAS presented the state of play regarding the new ENI and ENI CBC frameworks. The EEAS representative stressed that the new ENI regulation needs to be endorsed by the Council and Parliament and that Parliament is apparently not much in favour of the delegated act procedure.

#### **Fiche 8 – Monitoring and Evaluation:**

In answer to the Polish comment that conducting yearly evaluations could be cumbersome for JMAs, DEVCO clarified that, even if it is not a requirement, it would be advisable, and informed participants that the necessary guidance to successfully conduct this exercise is available on DEVCO's website. In this respect, the Finnish case, where programme-led evaluation and monitoring activities are being conducted in the current period, was taken as an example to be followed.

#### **Fiche 9 – Indirect Management with International Organisations (IO)**

In terms of entrusting the JMA to IO DEVCO stressed that it is solely up to the countries within the programme to agree on an IO as a JMA.

The meeting concluded around 13:00 hrs. Next meeting is foreseen in the first quarter of 2013. DEVCO will continue working on the further chapters of the Implementing Rules which will be submitted to the MS under written procedure.

Interact experts presented their non-paper "CHALLENGES RELATED TO THE APPLICATION OF SHARED MANAGEMENT IN AN EXTERNAL COOPERATION CONTEXT".

**Attachment: The ENI CBC programme co-financing**

The ENI CBC programme co-financing						
<b>1. Current ENPI CBC IR</b>						
<i>Article 20.1 of the ENPI CBC IR:</i>						
<i>Co-financing shall amount to at least 10 % of the Community contribution to the joint operational programme, minus the amount of technical assistance financed from the Community contribution</i>						
<b>Programme budget</b>		<b>EU funding</b>	<b>% of EU funding</b>	<b>Co-financing</b>	<b>% of total costs</b>	<b>Total costs</b>
Total		100,000,000.00	100%	9,000,000.00	8.26%	109,000,000.00
Technical assistance		10,000,000.00	10%			10,000,000.00
Projects		90,000,000.00	90%	9,000,000.00		99,000,000.00
<i>Programme guidelines</i>						
<i>A grant shall not exceed 90 % of the total eligible costs of the action.</i>						
		<b>Programme grant</b>		<b>Co-financing</b>		<b>Total eligible costs</b>
		89,100,000.00		9,900,000.00		99,000,000.00
				10.00%		
				11.11%		
				9.90%		
				9.08%		
<b>2. Draft ENI CBC IR</b>						
<i>Fiche Co-financing</i>						
<i>Co-financing shall amount to at least 10% of the EU contribution to the programme</i>						
<b>Programme budget</b>		<b>EU funding</b>	<b>% of EU funding</b>	<b>Co-financing</b>	<b>% of total costs</b>	<b>Total costs</b>
Total		100,000,000.00	100%	10,000,000.00	9.09%	110,000,000.00
Technical assistance		10,000,000.00	10%			10,000,000.00
Projects		90,000,000.00	90%			100,000,000.00
<i>Programme guidelines</i>						
<i>A grant shall not exceed 90 % of the total eligible costs of the action.</i>						
		<b>Programme grant</b>		<b>Co-financing</b>		<b>Total eligible costs</b>
		90,000,000.00		10,000,000.00		100,000,000.00
				10.00%		
				11.11%		
				10.00%		
				9.09%		