

WORKING GROUP ON PREPARATION OF ENI CBC IMPLEMENTING RULES (IR)

Meeting of 17 January 2013

Location: DG Development and Cooperation – EuropeAid, Rue de la Loi 41, 1000 – Brussels, Belgium, Floor 7, meeting room n.23

MINUTES

Introduction and general framework:

The meeting was chaired by Ms Bodil Persson (DEVCO F3). She explained that this was the 3rd informal working group session aiming at discussing the draft articles of the Implementing Rules (IR) for the new generation of ENI CBC Programmes.

In her introductory remarks, Ms Persson clarified that the ENI CBC Programming Document (PD) and the ENI CBC IR are two separate documents that are subject to different adoption procedures.¹

The participants were asked whether they had comments on the minutes of the previous working group meeting held on 27.09.2012. The minutes were adopted after having answered a request for clarification from Italy on Fiche no. 2 (Co-financing).

The Working Group (WG) started discussing the draft IR chapter by chapter.

The subsequent discussion can be summarised as follows:

¹ For this reason, the discussions on the Programming Document have not been reported in this document.

Fiche 1 - Project beneficiaries

Finland asked whether it would be possible to have beneficiaries from outside the programme eligible area.

DEVCO clarified that the programme area comprises (i) the eligible regions, (ii) the adjacent regions, (iii) the centres of economic interest. Therefore, the 20% applies to the areas not included therein, and that this would be further clarified in the draft text.

Romania reiterated its reservations that a natural person can be a grant recipient under the CBC IR. However, it recognised that it is up to each programme to set the rules in this regard.

Romania expressed reservations also on the Joint Managing Authority (JMA) validating project expenditure presented by the project partners. In their opinion, JMAs have no capacity or knowledge of the partner countries' national legislations to perform such a task. They believe that it should be done by *ad hoc* controllers. Likewise, they believe that there should be an entity responsible for recoveries in partner countries (PCs). If such entity fails to recover, the European Commission should take over, as it happens now.

DEVCO clarified that the IR impose an obligation on MAs to make sure expenditures are verified on the territory of PCs. The way the expenditures are verified is not imposed by the IR and may be different from one programme to another (e.g. use of national controllers, private auditors and a mixed model). Besides, the IR will also impose on MAs an obligation of means (and not of results) to recover unduly spent funds on the territory of PCs. The MA shall be responsible for reimbursing the amounts unduly paid to a beneficiary or a contractor in a PC or Russian Federation only where these amounts cannot be recovered as a result of fault or negligence from the MA.

Interact ENPI stressed that not all PCs are ready to take full responsibility. They also underlined that making civil society organisations subject to the scrutiny of control authorities in certain PCs may result in those organisations rethinking their participation in the ENI CBC. A flexible approach would therefore be recommended.

Italy and **Greece** expressed a wish that partner countries should be gradually more responsible for the control and verification. In this context **Poland** raised a question whether partner countries in fact want to be more involved in the verification systems. **France** added that the circuit of the financial control should perhaps be more explicitly outlined. **DEVCO** generally responded that the current control and verification system at first level will be kept.

Estonia suggested that the eligibility of natural persons as grant beneficiaries be regulated in the JOPs. They also raised the question whether it is necessary to subscribe lead beneficiaries to transfer the funds to the project partners as quickly as possible. It argued that in certain cases withholding of the funding can be used as coercion on underperforming project partners. **DEVCO** responded that it is in the interest of the effective implementation, CBC-wide, that the relevant funds are distributed with no delay. Withholding funds would question the very purpose of pre-financing which is to provide partners with a "float" to start to implement project activities. In addition, this is a matter of proportion. Not transferring funds to a limited number of underperforming project partners could

create a CBC-wide precedent to start withholding funding. This is not in the interest of a smooth CBC implementation and other tools to improve project performance should be used.

Greece suggested that the national "contact" points in partner countries be renamed as national "control" points. It should motivate more active approach towards control and verification. Those "control" points should be assisted by the Programmes. **DEVCO** agreed that it will further consider this suggestion.

Fiche 2 – Co-financing

Malta asked whether co-financing is obligatory. **DEVCO** responded that co-financing is a condition for the eligibility of projects, like in the current programmes.

Finland asked whether the "State aid" rules apply for co-financing. **DEVCO** responded that as this is an EU internal rule it applies for the ERDF share of the funding.

Fiche 3 – Framework for Implementation

Italy and **Greece** expressed reservations on the obligation for the participating countries to commit in writing that the minimum 10% co-financing of the programmes' eligible expenditure will be ensured. Their argument is that national governments cannot take responsibility for obligations imposed upon private entities. They therefore asked to remove such provision **DEVCO** clarified that the commitment of the participating countries to ensure the minimum requested co-financing is in any case contained in the programme's financial table, and said that they would reflect on the concerned provision.

Finland and **Estonia** requested information on the framework for the future EU-Russia CBC currently being discussed. **DEVCO** explained that the idea is to have one "General Agreement" with Russia applicable to the CBC as a whole and specific "Protocols" for each CBC programme. That 'General Agreement' would be the equivalent of the current financing agreements (FA) and would be ratified by the Russian Duma together with the protocols. The Joint operational programmes as such will not be attached to those acts for two reasons: (i) they would have to be translated into Russian in order to be ratified by the Duma; (ii) they include references to EU legislation that is not applicable to Russia. In this context **Poland** requested a clarification of what documents from this "two tier system" will the MS co-operating with Russia need to sign. **DEVCO** responded that this still needs to be discussed.

DEVCO continued by explaining that there would be two types of FAs: (i) one for partner countries co-funding the programme and pooling these funds (like Russia with the global budget managed by the MA), and (ii) one for the others. **Italy** inquired whether it is reasonable to go ahead with big programmes – having e.g. 10 co-operating countries – if only, e.g., three countries would sign the Financing Agreements (an option possible under the draft CBC IR). **DEVCO** believes that it is reasonable as practice shows that there are enough countries signing the Financing Agreement enabling to effectively kick-off the programme.

Fiche 4 - Indirect Management with International Organisations

No comments

Fiche 5 – Monitoring and Evaluation (M&E)

Finland and **Estonia** asked to clarify the M&E obligations that will be imposed on the programmes. **DEVCO** responded that the programmes will have to include an M&E plan in the operational programme and submit an annual one along with each annual progress report. In addition, there will not be any mid-term evaluation like now but the Commission can launch M&E of programmes at any stage of the implementation. **DEVCO** explained that this is what the CIR provides for.

Fiche 6 – Payments

In light of the national legislation in force, which does not allow public administrations to open accounts in private banks, **Italy** asked to be exempted from the obligation to open a specific bank account for the ENI CBC funds. The CBC funds would be managed in a single account together with other EU funds managed by Italy. **DEVCO** answered that it would be possible on condition that no tax is applied on the interests on pre-financing.

France pointed out that the CIR does not provide any similar article on the suspension of payments as foreseen in the new IR. **DEVCO** explained that the new articles are introduced because of the provisions on shared management contained in the new Financial Regulation.

Fiche 7 – Period of execution

Poland requested an alignment with ETC proposal as regards the possibility to allocate ERDF funds to existing ENI CBC programmes, and that the reduction or termination of the programme could also take place on the request of the participating countries. **DEVCO** responded that there would be an alignment with ETC, although the unilateral request from a participating country was not desirable. Nevertheless, in case of a deadlock situation at the level of the JMC, as it concerns EU funding the Commission could take the decision to reduce the programme's allocation.

Fiche 8 – Projects

Poland noted that “micro-projects” would not fit within the IR as they stand because there are no provisions on re-granting. **DEVCO** answered that re-granting would be included in ENI CBC IR.

Upon **Poland**'s request, **DEVCO** explained that the environmental impact assessment obligations for project beneficiaries, both in MS and partner countries, are laid down in the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, and in the Convention on Environmental Impact Assessment in a Trans-boundary Context (Espoo, 1991).

Fiche 9 – Technical Assistance (TA)

Malta pointed out that the rules defining when the TA can exceed 10% of EU assistance are too broad. **DEVCO** responded that this is to be decided on a case by case basis. In any case, a TA budget exceeding 10% should remain exceptional and reflect real needs of the concerned programme.

Finland inquired whether the guidance in terms of procurement rules in relation to partner countries does not give too much space for exceptions. **DEVCO** responded that the intention is not to open for

exceptions but to set fewer limitations at the level of IR as the particular approaches can be commonly decided by the Programmes.

Fiche 10 – Visibility and Use of Language

Malta inquired why the Programmes should give project examples in their websites in "widely spoken" EU language. **DEVCO** explained that the CBC is an EU-wide endeavour. In this regard the information about the ENI CBC programmes should be available across the EU also to those not speaking the languages of the Programme area.

Fiche 11 – Management and Control Structures

Malta and **Portugal** pointed out that there is a possible contradiction in the wordings that the Joint Monitoring Committee "shall" take decisions by consensus but it may put certain decisions to a vote". As a general remark, **DEVCO** explained that JMC voting procedures should be set up in the rules of procedure that will be adopted under each programme. However, **DEVCO** agreed with the above remarks and said that they would review the wording. **Portugal** further argued that the approval of the rules of procedure should be taken by "unanimity". **DEVCO** agreed and will reflect this in the revised text.

Finland pointed out that the voting rights should not be assigned to countries but to each country representative (provided the numbers of representatives for each country are equal). **DEVCO** agreed to consider and possibly reformulate this part.

With reference to the role of the JMC chairperson, **France** suggested to replace "arbitrator" to reflect better its role.

Fiche 12 – Forms of grants

Estonia asked to extend the range of eligible preparatory costs, currently limited to travel costs. **DEVCO** answered that covering travel costs is already an exception to the general rule applicable to external cooperation actions. The exception under the CBC is meant to increase the involvement of beneficiaries from the partner countries with limited financial resources and to improve the quality of partnerships.

Poland pointed out that pre-financing is not mentioned in the Article 1. **DEVCO** responded that the form of grant, i.e. how the grant is determined (reimbursement of eligible costs, lump sums, unit costs, etc.), and the payment structure (pre-financing or not) are two different things and, as such, must be kept separate. Pre-financing is possible under the ENI CBC IR but it is not covered by the "forms of grants" chapter.

Conclusions

Ms Bodil Persson concluded the informal working group session. She informed that Interact will prepare a Programming Guide. This guide will be divided into various working fiches which will be made available to the programmes at different points in time, depending on the progress in preparing the ENI CBC legal framework. Ms Persson further highlighted that the ENI regulation is likely to be adopted in mid-2013.

Next meeting of the informal working group has been set for 21.3.2013.