# FPA Watch Group Meeting
## 12 October 2004
## 10h-16.30
## at VOICE (43, Avenue Louise, Brussels)
### Participants

Miriam Cue Rio, Karine Jacquemart, Action Contre la Faim; Annette Frick, ADRA; Vittorio Villa, ALISEI; John Makoha, AVSI; Jerome Lebouc, CARE International; Jan Rodenburg, CARE Nederland; Harald Happel, Caritas Europa; Anna Bergman, Church of Sweden Aid; Cinzia Laurelli, CINS (Cooperazione Italiana Nord Sud); Riccardo Stefanori, CISP; Olivier David, Comite d'Aide Medicale; Simona Pogliani, COOPI; Robert van der Wolff, CORDAID; Morten Bo Vinther, DanChurchAid; Diana White, EU-CORD Network; Simonetta Risaio, Handicap International; Adriana Oprescu, HelpAge International; Michael Roelands, ICCO ; Karine Penrose-Theis, International Rescue Committee (IRC-UK); Sandrine Rosenberger, Malteser Germany; Elli Xenou, MDM-Greece; Marina Thomopoulou, MDM-Greece; Claire Fehrenbach, Medecins du Monde ; Jean Saslawsky, Medecins du Monde; David Sauter, Medair; Mags Bird, Mission East; Inma Vazquez, MSF; Susie Ridley, Oxfam GB; Pawel Kudzia, Polish Humanitarian Organisation; Kathrin Schick, Samantha Chaitkin, Catelijne Mittendorff, VOICE; Sabine Verderber, World Vision Germany; Jane Backhurst, World Vision International

### Apologies

Brid Barrett, Concern Worldwide; Peter Toftgard, Erikshjalpen; Nok van de Langenberg, CARE Nederland; Henrik Boejen, HelpAge International; Gloria Mella, Save the Children UK; Rikke Holm, DanChurchAid; Benoit Destouches, Marie-Pierre Caley, ACTED; Peter Botcher, Hammer Forum; Stefano Piziali, CESVI; Gerard Schilderick, CORDAID

### Minutes

1)     The FPA Watch Group in the implementation phase

   ➢           Composition of the new Watch Group

   o           Profile of the group: commitment

The profile of the FPA Watch Group must be based on commitment. The Watch Group is not so much a group for learning, as much as a group where members are expected to give contributions. Those wishing to have more information about the FPA can read the minutes of Watch Group meetings on the VOICE website, but membership in the Watch Group must be limited to dedicated participants who are able and willing to bring input into debates. They should be a consistent presence at meetings and e.g. in e-mail discussions. VOICE's role is that of facilitator.

The group attending this meeting is probably somewhat too big to be efficient – but too many is better than too few! Participants can use a system of self-selection to reduce the numbers. In principle, this should reflect one person per organization, and "family" organizations should work out how they want to be represented. A representativity of all ECHO partners would include both small and big NGOs; a healthy variety of EU member states would be ideal but is perhaps less important than size.

   o           Introductions

Each participant stated the contribution his or her participation in the Watch Group could make. Participants also stated the extent of their relations with ECHO (how many projects, etc.).

   o           Next steps

The group agreed that, in order to ensure each Watch Group member is mandated from

his or her organization and able to commit time to it, **a form should be sent out to all participants, with a deadline, for confirmation of the commitment to the Watch Group.** This would also be an opportunity to volunteer additional commitment to the group by becoming part of the Task Force. A suitable deadline would be 27 October, so that participants will have time to discuss the mandate with their organizations.

**A process will need to take place in order to gain the Watch Group's status as a legitimate representative of all ECHO NGO partners.** Experience has shown that representation increases the weight of the Watch Group in discussions with ECHO. Following the deadline for participant reconfirmations, VOICE will send the list to all ECHO NGO partners, asking them to acknowledge their approval of the group and their willingness to be represented by it (similar processes have taken place in the past and may be used as models). At the end of this process, a letter will be sent to ECHO.

➢ Discussion of the Terms of Reference

VOICE presented a draft Terms of Reference based on the TOR drafted for the Watch Group in 2001. After discussion about various elements, the Group agreed on the following Terms of Reference:

19 October 2004

**TERMS OF REFERENCE FPA WATCH GROUP**

**I - Background**

The first FPA Watch Group was formalised in 1999, following on from the work of the "Dialogue group". Its initial task was to monitor the implementation of the new FPA. The group was later charged with consulting, on behalf of ECHO Partner NGOs, on certain aspects of the new Framework Partnership Agreement. Following the consultation process resulting in the 2003 FPA, the necessity arose of continuing the Group to monitor the implementation of the new FPA and any future modifications.

**II – Purpose**

To represent the views of ECHO NGO partners in the monitoring, review and consultation of all matters relating to the Framework Partnership Agreement (FPA) that governs the contractual relations between ECHO and its NGO partners. To work towards a common interpretation and consistent application of the FPA between ECHO and its Partner NGOs.

**III – Commitments**

1. To defend the general interest of all ECHO NGO partners as related to the FPA

2. To collect and organise any comments that are made from the wider community of ECHO NGO partners with regard to the ongoing implementation of the FPA, and to communicate to ECHO any important issues that arise

3. To collect and organise any comments and feedback towards improvement of the FPA that are made from the wider community of ECHO NGO partners

4. To be the contact representing ECHO NGO partners to which ECHO may refer when wanting to discuss any planned or potential changes to the FPA

5. To analyse any difficulties working with the FPA, as well as any planned or potential changes to the FPA, from the view point of ECHO's NGO partners

6. To share any important issues arising from discussions with ECHO with the wider community of ECHO NGO partners

7. To identify and facilitate the sharing of any new tools towards the better comprehension and implementation of the FPA

<u>IV - Members : organisations represented by individuals</u>

1. The group will be composed of around 20 NGOs that are ECHO partners, or networks representing ECHO NGO partner organisations. These organisations must have good knowledge and a regular contractual relationship with ECHO.

2. Each of these member NGOs must designate <u>one</u> individual to be part of the FPAWG and attend meetings.

3. The names of the organisations and of the individuals representing them will be communicated to ECHO by the group.

<u>V -  Methodology</u>

*a)  FPA Watch meetings*

1. The group will meet at least 4 times a year to discuss any comments and proposals that have arisen either from ECHO NGO partners or from ECHO.

2. The Group will establish a yearly calendar of meetings, with each meeting being confirmed 3 weeks in advance.

3. Minutes of meetings will be written within 2 weeks of each meeting, filed with the Secretariat of VOICE and published on the VOICE website in order to be available to the community of ECHO partners.

4. The meetings will usually take place in Brussels, hosted by VOICE.  However, the group will endeavour to hold meetings in other European locations if it is advantageous and cost-effective to do so.

*b)  Meetings with ECHO*

5. The group will identify a Task Force (and establish working groups as required)  that will meet with ECHO to discuss ideas and comments that have arisen, and to negotiate issues as necessary.  The meetings between this committee and ECHO will be scheduled as necessary.

6. From time to time, and at the request of either ECHO or the FPA Watch Group, representatives of ECHO may be invited to some FPA Watch Group meetings.

*c)  Consultation, analysis and reporting back*

7. The group will receive from the wider community of ECHO NGO partners any comments that arise in relation to the FPA. These will be communicated via the Secretariat of VOICE, including via the FPA Watch email (fpa@ngovoice.org).

8. During or in between the meetings, the group will analyse any comments or issues that have been received from the wider community of ECHO partners, and any changes to the FPA that ECHO are proposing.

9. When there is a need to get a broader perspective, the group will consult with the wider community of ECHO partners using the infrastructure of VOICE and through various channels.

10. At various points during the year, the group will provide a report on progress to the wider community of ECHO NGOs partners through various channels: e.g. the annual VOICE Forum, ECHO's annual partner meeting.

<u>VI. FPA Watch member organisations agree to respect the following rules:</u>

1. To be an ECHO NGO partner organisation, or a network that represents ECHO NGO partner organisations

2. To have a regular contractual relationship with ECHO

3. To have their nomination agreed by ECHO NGO partners having accepted the representativity of the FPA Watch Group

4. To nominate one individual to work on FPAWG matters and attend meetings

5. To be able to participate in a minimum of 3 FPA Watch Group meetings per year

6. To commit to confidentiality concerning practicalities discussed by the Watch Group


VII. Additional indications

1. Membership in the Watch Group shall be reviewed and reconfirmed each two years.

2. The role of VOICE in the FPA Watch Group shall be limited to the stipulations of the above Terms of Reference.

3. The names of all the organisations and individuals in the group will be communicated to all ECHO NGO partners, and to ECHO.

4. The above information will be communicated to all ECHO NGO partners and to ECHO by VOICE.



2)   Current concerns in the implementation of the new FPA

   ➢             Systematisation of main challenges

The following main challenges were identified, falling into about 4 categories:

 1. Procurement

- publication requirement (on partner website)
- level of information at different reporting stages
- drugs standards and expectations
- Procurement centers
- Dedicated supplies: constitutes a risk
- Market vs. lot
- Set of rates to include in a contract
- Use of stock at liquidation of contract (madness!)
- derogations to the rules on nationality and origin: how far can these go?
- Guidelines and templates (what are the obligations and the consequences?)

 2. Co-financing

- Reporting: prorata between different donors
- Coverage of indirect costs
- Project vs. country strategy (amount of info provided to ECHO): limits and expectations
- Consortia *
- Pressure on NGOs *
- Own (NGO) funds vs. funds from different donors *
- How are EU government donors seen by ECHO? *

 3. Support materials and interpretation of texts and forms

- "helpdesk"
- further training

- timing of reporting
- eligibility of costs: period of eligibility and nature of goods/services (e.g. construction)

4. Management questions related to the FPA 2003 *

- Visibility requirements
- roles of different ECHO actors (field decision-making?) *
- "closed shop" problem (i.e. not allowing new NGOs into global plans) *
- audits and risk classification *
- Transition: how flexibly will this period be treated in later ex-post audits? *
- consistency *
- payments *
- delays *
- Complaint procedure *
- NGO resources *
- Risks of the "results-oriented" approach *
- Flexibility vs. bureaucracy: level of questions posed to NGOs at the proposal phase

* indicates items that can be considered "political"

The group decided these should be split up into items that are practical and should be discussed with ECHO 4, and political issues that should be raised at higher levels. This list could provide the basis for the WG's work over the next few months.

➢ Possible work programme for the coming year

o Selection of a Task Force

**A Task Force should be established** – less formally than the composition of the Watch Group. Members of this group should be very familiar with the problems in their own organization in terms of the FPA. They would be able to give extra time and energy to the Watch Group. A good size for this group might be 7-8 people. Two "veteran" Task Force members, Simonetta Risaio and Jean Saslawsky, agreed to take part in the Task Force at the beginning in order to ensure a smooth transition. Besides the intermediate work between Watch Group meetings, preparing WG meetings, etc., the Task Force would be responsible for proposing any further **working groups** within the Watch Group.

o Next meetings/ next steps

**Steps to take before 6-7 December 2004 (ECHO Partner Meeting)**

| Actor | Activity | Date or Deadline |
|---|---|---|
| | | |
| Watch Group: • | Form a (transitory) Task Force | ASAP |
| | | Deadline 27 October |
| | | |
| • | Comment on TF document by e- | November |

| | | | |
|---|---|---|---|
| | • | mail | |
| | • | Meet again | Late January |
| Task Force: | • | Give comments to ECHO support documents | End October |
| | • | Divide up types of questions/issues (were some already addressed in the new ECHO documents?) | End October |
| | • | Send comments and work to Jean/Simonetta | First week of November |
| | • | Prepare draft document and agenda for late November meeting with ECHO | At early November meeting |
| | • | Circulate document to WG for any further comments | November |
| | • | Meet with ECHO (Pablo Ibanez) | Late November |
| | • | Propose working groups (if necessary) | |
| VOICE: | • | Send fourth ECHO document to FPA Watch Group | ASAP |
| | • | Send "commitment forms" for FPA WG members. | ASAP |
| | • | Send minutes of 12 October meeting to Watch Group and publish on Web | ASAP |
| | • | Book date for FPA TF meeting with ECHO | November |
| | • | Circulate representativity statements to all ECHO partners | November (for collection until +/- January) |

**Upcoming dates:**

27 October:

- Deadline for Watch Group members commitment
- Deadline for Task Force volunteers

<u>1st week of November</u>

- Task Force next meeting

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<u>Late November</u>

- Task Force meeting with ECHO

<u>Late January</u>

- FPA Watch Group next meeting

3) ECHO's Point of view (Pablo Ibanez, ECHO)

After almost one year with the new FPA, most relevant actors have had at least a presentation to the new FPA. This includes field experts and NGO field staff. ECHO also considered the grant facility for training a success, since it produced materials that were shared with all ECHO partners.

➢        Update on current state of supporting and training materials; review of new Guidelines documents

Until now, ECHO has not released any guidelines documents. ECHO is now presenting **guidelines on Annexes I, II and III of the FPA**, as well as **guidelines for the logframe**.

ECHO hopes to release web-based **guidelines on Annex IV** (the General Conditions) in the next 3-4 weeks. The **Annex V guidelines** are also forthcoming. **Translations** for all these guidelines will have to be done in-house by ECHO, using special ECHO terminology, so English-language corrections and French translation may take much longer to arrive. Comments on language are welcome.

Contrary to some strange rumours that have been going around, the FPA will not be rewritten in 2004!

However, a revision of the Implementing Rules of the Commission Financial Regulation has been taking place. A 20 October decision by the outgoing European Commission will put the so-called "Fast-track revision" into place. This is likely to impact the FPA in the following ways (mainly positive):

1) A reflection of the important recent Commission Communication on **untying aid**, which will go much further than what is reflected in Annex V

2) **Modification of the tendering procedures**, which will become much more agile

3) AidCo (EuropeAid) will **modify the templates for international organizations**. ECHO prefers to keep the international organization templates the same as the ones for NGOs. ECHO would like to ensure, for example, that there is only one definition of "force majeure".

4) The EC has adopted **standard formats for grants**. These formats do not apply to ECHO and AidCo, but there cannot be any contradictions between standard formats and ECHO/AidCo formats.

Given the new adaptations, ECHO 4's priority until December 2004 is to review the texts of the Grant Agreement and General Conditions (which can be modified without the agreement of European Commission authorities outside of ECHO, just the signature of the ECHO director) and to propose a new version of Annex V to the EC authorities.

It is important to note that **none of these changes will change the system and procedures of the 2003 FPA!** The body of the FPA will not be touched.

As for **consulting the Watch Group** on these new changes, ECHO 4 will send any new provisions to be included in the FPA documents to the Watch Group, so that it can monitor the changes. ECHO will make an effort not to change the numbering of the provisions, but mainly only the wording.

➢　　　　　Current challenges from ECHO point of view

ECHO finds that **the 2004 transition was worse than had been envisaged**. The following reasons were given:

1) **The 1998 FPA is still in use**. Not only ECHO desks are sticking to the outdated rules, but also ECHO partners. In the last quarter of 2003, where NGOs had the choice between old and new rules, most contracts followed 1998 rules. Only in 2 cases did NGOs take advantage of the opportunity to upgrade 1998-style contracts to 2003 rules.

2) Pablo Ibanez identified a number of "syndromes"

   a. The "**First time" syndrome**: based on rumours about how the new FPA would be. Instead, systematic and structural education about the new FPA was needed.

   b. The "**Let's try" syndrome**: NGO Partners became experimental and had success – repeatedly in some cases – with bad practice. Because they "got away with it", they assumed their methods were right. Unfortunately, Desk officers did not correct the problems from the outset, but actually accepted "wrong" proposals, budgets, logframes, etc.

   c. The "**Dependency" syndrome**: prevents a system based on common sense from working. Partners and Desks alike have been afraid to take any steps on their own. Too many questions are proposed without accompanying suggestions of possible solutions to the problem. Since ECHO has to start from zero to verify, it takes a lot of time.

**ECHO has become a Directorate-General (DG) of the European Commission since 3 September 2004** (previously, ECHO was an "office"). This will result in a change of the ECHO organigramme. Pablo Ibanez and his team will be part of ECHO 8, the unit responsible for legal affairs, transparency and archives. The "relations with partners" sector will be in ECHO 4. Thus the partnership and contractual sections will be separated, whereas currently they are together. This new organigramme will not be implemented immediately.

Until the end of 2004, the other challenges are:

1) **Consolidation of texts, correction of mistakes.**
   If other EC services are to copy the FPA model, the model has to be of excellent quality.

2) **Looking for a structural solution**
   A grant facility was launched in July (concentrating on financial management). Another, for the 2005 budget, will also be launched this year (likely concerning proposal writing). ECHO will seek proposals that will benefit the whole community, not just target a single partner.

3) **Proposals – Improvement of the way they are drafted**.

Discussions have been very painful. Partners are not writing good enough proposals, and Desks are having to rewrite and correct them. (This contributes to delays.)
Examples of specific problems: few good justifications of the budget. Indicators are missing.

4) **Assessment**
Why does this take so much time? Assessment of proposals doesn't seem to deliver what was planned: more resources seem to be devoted to the assessment of proposals than to monitoring project implementation.

> Questions and answers

**Help desk**: ECHO will need a contract with a legal entity that is not a Partner organization.

**Training**: ECHO has an interest in training, even more than a responsibility. ECHO would be ready to provide its staff to be involved in more joint seminars and workshops organized by partners.

**Risk of audit down the road for mistakes made in 2004**: The Auditors, looking back at the transition period of 2004, are likely to say, "this, this, and this were done wrong". Perhaps, based on mitigating factors (such as that the Desk approved it that way, or that ECHO knew and agreed with the proposal, or that there was uncertainty with respect to the procedures…), ECHO may choose not to issue a recovery order for the funds in question. Written proof of mitigating factors might include an exchange of mails with the Desk, or an open mention in the proposal; in general, you would try to prove that the NGO acted in good faith.

There are two possible approaches to the audit, and ECHO has raised this question in the consultations on the revision of the Internal Regulations:

1) the risk level will determine the depth of the audit to which a sample of projects will be subjected.

2) The risk level will determine the depth of the audit to which all projects during the given period will be subjected.

If ECHO's position is accepted it will clarify what ECHO's obligations are with respect to the audit.

**Derogations from the rules of nationality and origin**: Almost all ECHO grant agreements now contain derogations from these rules. If an NGO wants an "article 9" in their grant agreement, it can put it in the grant agreement, ask the desk for it, and write a justification. The desks, like other ECHO officials, are not entitled to *offer* derogations but they are relatively likely to accept them.

**Annex V**: There are two problems:

1) **Annex V procurement rules are to be codified in the NGO's internal procurement rules <u>by the end of 2004</u>**. ECHO would like to see a model of best practices that it can share with other partners. The final results of the DanChurchAid/ICCO/Christian Aid project to modify internal procurement rules and other management practices in line with EC requirements has not yet been shared with ECHO.
- ECHO strongly recommends that NGOs *copy* the *principles* **of procurement as in Annex V into their internal rules**. This way NGOs would be safe from any third parties (such as OLAF).

2) **Annex V itself** carries two main implementation problems:

    a.   **Ex-post publication**. (Art. 3.8) This is not happening in reality. But it must be done, <u>no derogations are available from this requirement</u>.
All that is needed to publish results of the tender procedure is to cut and paste this information from the report to somewhere aimed at third parties, in particular a website.

    b.   **Ex-ante publication**. ECHO is surprised that NGOs are mainly using **tendering**, when the FPA provides many more convenient possibilities, such as **framework contracts** and **procurement centers**. The IFRC and UNICEF now run recognized procurement centers. Other potential procurement centers are out there, but have not yet contacted ECHO to be recognized as such.
In case of "**frustrating tendering"** Annex V permits you to go to alternatives, such as single quote, or other parties. NGOs should tell ECHO when it has a problem with tendering.

**Revision of Annex V**: three main changes are planned:

1)   The **rules of origin and nationality** will change. Eligible countries will become the country of operation plus any developing country (according to OECD criteria).

2)   "**Dynamic tendering"** will become an option. This is a web-based system similar to E-Bay.

3)   A (historical) **definition of emergency** will be inserted, covering primary emergency, emergency and ad hoc decisions. Something like "operations for which the delay would put human lives at risk". For tendering purposes, this will allow NGOs to use the single quote.

Pablo Ibanez agreed with the WG's proposal to ask any further questions *prior* to the Annual Partner Meeting (6-7 December) as it would be a waste of time at the meeting to include the FPA.

SC, 22/10/2004