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Directorate B Resources, Finances, Legal affairs  
Unit B/2 Finance Management, Legal and procedural affairs

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## REVISION OF THE FPA CONCEPT PAPER

### 1. INTRODUCTION

The current FPA expires by the end of this year. Pursuant to Article 25 of the FPA (for NGOs): "*The Framework Partnership Agreement shall remain valid until 31 December 2007. The FPA may be carried over tacitly for a further maximum period of one year (...)*"

In spite of the possibility to extend the FPA by tacit agreement for one year, the recent changes to the Financial Regulation (changes which entered into effect as from 1 May 2007), the room for improvement of the current FPA and the need to simplify and increase the flexibility of the instruments, all justify a new FPA.

The FPA for International Organisations (IOs) does not foresee a duration, and might theoretically be maintained. The revision of this FPA would, however, be useful in order to guarantee a consistent approach towards all partners. The revision of the FPA for IOs will stay in line with the provisions of the FAPA.

This concept paper intends to address the main drivers for the revision of the FPA as well as the most visible areas for change. It will be complemented by bilateral contacts on the current wording and texts with the different stakeholders. In this context, the contributions of the FPA Watch Group of NGO-partners and of the Red Cross family are welcomed.

### 2. KEY CONCEPTS AND OBJECTIVES OF THE REVISION OF THE CONTRACTUAL INSTRUMENTS

#### 2.1. Continuity

Continuity of procedures should be favoured: the new FPA would not introduce conceptual changes, but rather further develop the key concepts on which the current FPA is based.

Quality in partnership would remain at the heart of the revised FPA. More focus would be put on the selection and assessment procedures. Furthermore,

quality in partnership should not favour a "one size fits all" approach but take the specificities of our partners into account.

Outputs and results would remain the cornerstone of the FPA. Where possible, simplification would help to focus on outcome (results and indicators) instead of on means and inputs, certainly at operational level.

The revision of the FPA will benefit from the extensive consultation process of ECHO staff and partners which has entailed the adoption of Fact Sheets. Useful changes introduced by these Fact Sheets would therefore be taken on board for the new FPA.

## 2.2. Diversity of our partnership and proportionality of the control mechanisms

- DG ECHO's current NGO partners have very diverse backgrounds, expertise and capacities. As a principle, DG ECHO wishes to maintain such diversity.

The FPA is DG ECHO's main control mechanism to ensure such diversity. The revision of this mechanism must be seen in light of the revised Financial Regulation ("FR") which has put a much stronger focus on internal control and risk management and integrates "*effective and efficient internal control*" as part of the principle of sound financial management including i.a. "*an appropriate risk management and control strategy including controls at beneficiary level*".

The new FPA thus has to underpin i.a. an adequate control strategy. This can only be achieved by developing differentiated control mechanisms which acknowledge the diversity of DG ECHO partners and recognise the progress made by certain partners in strengthening their administrative and financial capacity.

Besides the internal control and risk strategy, the FPA should also, where possible, recognise the equivalence of procedures for those NGO-partners with strong assurances on their financial and administrative capacities.

Finally, subjective judgements with respect to individual partners should be minimised as much as possible. Therefore, transparent and clear rules have to guarantee proportionate, equal and fair treatment of all partners. The principles of the rules will have to be integrated in the FPA.

- DG ECHO is already funding specialised agencies of the Member States. The contractual arrangements are those applied to NGOs. The revision of the FPA should also reflect on a more adequate contractual framework for cooperation between DG ECHO and these agencies.

## 2.3. Simplification

The revision of the FPA should also focus on the simplification of the current rules and procedures. Issues in this context are:

- **Reporting:** in spite of the current FPA's strong operational focus (results driven approach and ownership by the partners), practice demonstrates a continuing strong focus on inputs and organisational procedures at proposal and final reporting stage. The current reporting cycle with the submission of three reports (the interim, the preliminary final and the final report) is perceived to be rather heavy. Whilst reporting should continue to focus on its core objective (i.e. allowing DG ECHO to monitor the operation), there might be ways to simplify the cycle, by strengthening its results-driven approach and by reducing the number of exhaustive contractual reports.
- **Equipment and stocks/consumables:** the current rules on equipment and stocks are in general perceived to be rather complex. Partners have to apply different rules and procedures regarding the eligibility of costs and the final destination of equipment and stocks at the end of the operation. The new FPA should introduce simplified rules in this regard.
- **Annex V:** the new FPA should use the revision of the Financial Regulation to introduce simplified procurement rules and to reflect on the appropriate thresholds for the different types of procedures.
- **The Single Form:** the Single Form should avoid as much as possible redundancies and duplication. In addition, financial reporting should be enhanced and could result from the partners' financial and management accounting system.

### 3. THREE CONTRACTUAL LEVELS OF CHANGE

The revision of the FPA will require changes to three different levels or "layers" of the partnership instruments between DG ECHO and its partners, notably:

- (1) The partnership instruments themselves, i.e. the text of the FPA (for NGOs and IOs). This part of the revision would mainly focus on better acknowledging the diversity of partnership and on integrating the strengthened internal control philosophy (also including the selection and annual assessment procedures).
- (2) The implementing rules of the FPA, notably the Grant Agreement (currently Annex III), the General Conditions (currently Annex IV) and Annex V. This part of the revision exercise would mainly focus on the rules regarding reporting, procurement, stocks and equipment, and the like, including the changes introduced in the Fact Sheets.
- (3) The standard formats, i.e. the Single Form and the financial reporting. This part of the exercise would focus on the simplification of the formats.

#### 3.1. Changes to the FPA

##### 3.1.1. *Proportionality of controls on the basis of a risk assessment*

To better take account of the diversity of DG ECHO partners and to establish a more effective control environment as imposed by the Financial Regulation,

the new FPA would establish a control mechanism with two different approaches for managing risks as assessed by DG ECHO. Internal control is not an absolute concept, but has to be managed taking the specific context into account. This means e.g. that the monitoring of the actions will not only depend on the type of control mechanism but also on the operational specificities of the action (i.e. security aspects can make on the field monitoring impossible, complex actions may need several field monitoring independent of the type of control mechanism).

Under this option, the new FPA would explicitly introduce differentiated control procedures in the FPA as a result of the verification of eligibility and suitability carried out prior to the signature of the FPA and at the stage of annual assessment.

The FPA would continue to establish a list of minimum requirements for its signature. However, the FPA would remain open enough for most of the humanitarian NGO's with operational capacity. This should eliminate the need to use non-FPA grants for operational imperatives.

This approach is, in principle, a logic development of the 2003 FPA but modified to take into account the new regulatory requirements. It introduces the benchmarking of NGO partners on the basis of their financial and administrative capacities and to raise their profile in order to recognise the equivalence of the partner's procedures, up to a certain financial limit.

For those NGOs satisfying the minimum requirements established for the signature of the FPA, the "*A control mechanism*" (A refers to actions), DG ECHO would focus its controls on the action itself through its monitoring during the implementation phase and controls at liquidation stage, and through ex-post audits of the action. The assessment for the "A control mechanism" would establish a maximum amount of funding per grant agreement. DG ECHO's internal operational procedures would define the minimum level of monitoring of the actions carried out for the "A control mechanism" during the implementation period, at liquidation stage and for ex-post audits. The same internal instructions would define the exceptions and waivers to the control mechanism and the procedure to apply them. For instance, in case these partners would introduce proposals above the related rules and limits, exceptions might be accepted on the basis of additional controls to limit the additional risk and only when duly justified by the circumstances of the action (e.g. in case of urgency).

The FPA provisions would facilitate DG ECHO to recognise and favour the partner's financial capacity, its compliance with the "four pillars" identified in the Financial Regulation (partner's internal control mechanisms, external audit, accounting procedures and procurement rules) and the equivalence of the partner's own procedures. In this case the partner would comply with the principles of the FPA but would be allowed to apply its own rules and procedures up to a certain financial limit. Partners in this group with "*P control mechanism*" (P referring to own procedures) would not be subject to a maximum amount of funding per grant agreement, enjoy a higher flexibility for use of own procurement procedures during the implementation of the action, and audits would also focus on the partner's codification and

verification of procedures. Beside the normal monitoring supervision, the ex-post audits should also confirm the sound implementation and respect of the procedures.

NGOs would apply for partnership as such, and DG ECHO would decide on the type of partnership during the selection phase as well as in the context of the annual assessment.

The main advantages of the introduction of the P and A control mechanisms in the partnership are the following:

- **Transparency**: the FPA establishes clear criteria for both control mechanisms;
- **No additional assessment when discussing project proposals and allocating funds**: the assessment happens at selection phase and during the annual assessment exercise;
- **No reduction of partners**: all active NGOs complying with the current FPA criteria would be invited to sign the new FPA.
- **Easier access for new partners**: the A control mechanism doesn't base controls on an ex ante evaluation of the partners' procedures. The assessment of partners under this control mechanism would thus be easier for the candidate partner and would be quicker than the current procedure.

It should be clearly stated that the differentiation in types of control mechanism doesn't intend to create two levels of partnership for selecting proposals. When publishing the list of partners, it will happen without reference to the control mechanism, which can change over time.

In order to reduce the administrative complexity, common guidelines and tools will be established.

Although the new FPA would have to reflect the main principles of the differentiated partnership, all partners would sign the same FPA and use the same contractual instruments (no differentiated legal instruments). It is only at the level of monitoring of the action and in the liquidation that specific criteria will be used. DG ECHO will assure a mix of agreements with both types of control mechanisms. Desk officers will apply diversity of partners based on the quality of the proposals and the assessed needs. NGOs would apply for partnership as such, and DG ECHO would decide on the control mechanism during the selection phase as well as in the context of the annual assessment.

### **3.2. Changes to the implementing rules of the FPA**

The revision of the FPA also requires the revision of its implementing rules, notably the Grant Agreement, the General Conditions and Annex V.

#### **3.2.1. Reporting (cf. General Conditions)**

Contractual reports will have two parts: the narrative report which focuses on operational issues (and would include an overview of the budgetary allocation

per sector) and the financial report for more detailed, input oriented information focussing on the eligibility of expenditure whereby the partner would be able to use outputs of his own financial and management accounting system.

In addition, the partners would only have to submit two reports: an *interim* report (to be submitted by default 3 months before the end of the operation, but with the possibility to adapt this deadline in function of the duration of the operation) and a *final* report (to be submitted at the latest 3 months after the end of the operation). The financial report would have to be submitted only at final reporting stage, but the budgetary allocation per sector will also have to be updated in the narrative report at the interim report stage.

Finally, focused non-contractual ad hoc reports of maximum 5 pages may be requested by DG ECHO to assure appropriate supervision or may be provided on the Partners' initiative for requesting changes of the agreement and/or the budget. As these reports will be limited in pages and be focused on specific issues, it should be possible to treat them fairly quickly.

### 3.2.2. *Equipment and stocks/consumables (cf. General Conditions)*

In the context of equipment and stocks/consumables following issues will be examined in the General Conditions:

- To improve the possibilities for depreciation: the current DG ECHO depreciation rates are rather conservative. Depreciation tables might be more detailed (and specific for different kinds of equipment). Charging the full purchase price for support costs should become an exception (and entail an obligation to donate the concerned equipment to the local beneficiaries – such obligation does not exist if the partner charges depreciation costs based on the purchase cost).
- To examine the possibility of creating allowances for small support equipment of € 5.000 or € 25.000 (depending on the amount of the grant). The partner might cover support costs (with a maximum unit cost of € 2.000 per item) and be allowed to keep the related equipment without donation.

### 3.2.3. *Annex V*

Annex V would not be applicable to International Organisations and the specialised agencies of the Member States. It would, however, apply to the NGOs and, by default, to those International Organisations whose procurement rules have not been assessed. The currently existing exceptions, such as the conditions for single bids, would be maintained.

Where possible, the recent changes to the Financial Regulation (and its Implementing Rules) will be taken on board to simplify current administrative and financial procedures. In addition, the current procurement rules should be thoroughly simplified. The following set of rules will have to be discussed inside the Commission for reflecting the specificities of humanitarian aid in the revised Financial Regulation:

### **General rules**

For procurement the following rules would be proposed:

	<b>Services</b>	<b>Works</b>	<b>Supplies</b>
<b>Open International</b>	$\geq 500.000$	$\geq 5.000.000$	$\geq 500.000$
<b>Open Local</b>	$< 500.000$	$< 5.000.000$	$< 500.000$
<b>Negotiated</b>	$< 300.000$	$< 300.000$	$< 150.000$

In addition, it would be proposed that partners would be able to use their own procurement rules as follows:

- In case of A-control mechanism: for procurement up to 60.000 EUR;
- In case of P-control mechanism: for procurement up to the level of the negotiated procedures as indicated in the above table.

The partners' own procurement rules would be recognised by DG ECHO through the assessment procedures (at selection and annual assessment stage) with additional controls on the occasion of the *ex post* audits.

### **Specific rules**

- For the purchase of medicines, the Partners would always follow a restricted procedure to ensure sufficient quality control (no application of partner's own rules);
- For the purchase of food, a number of additional conditions to be added in the tender-procedure have to be established (e.g. phyto-sanitary controls);
- For the renting of properties, they would always follow a negotiated procedure (no application of partner's own rules).

#### **3.2.4. Adapted contractual instruments for the specialised Agencies of the Member States**

Specialised agencies of the Member States would be considered to use the P-control mechanism, with DG ECHO recognising the equivalence of the internal procedures of these agencies. We suggest using for these partners the same contractual instruments as those put in place for the International Organisations.

### **3.3. Changes to the standard formats**

Where possible, contractual instruments such as the Single Form and the financial reporting, will be simplified with a view to reduce redundancy and to take better account of existing accounting procedures of the partners.

- It has to be examined how the readability of the Single Form may be improved. It is suggested not to enter all changes in all paragraphs during the life of the project, but to add them in specific boxes at the end, giving more flexibility on the structure in order to avoid redundancies where possible (guidelines should indicate what has to be described). In order to reduce redundancies, we suggest imposing a limit of 20 pages for the Single Form. Once available, the use of e-Single Form should be promoted in this context.
- A statement of costs allocated per sector would be integrated into the Single Form (replacing the current annex II of the FPA). The separate financial report will be mainly based on the partners' accounts. This would simplify the work for the partner and facilitate ex-post audits as well.
- The logframe would be maintained as it is the basis for the assessment of the different proposals. Partners who have similar in-house procedures may use these if they give the same level of information. In the Single Form, redundancies with data of the logframe will be avoided where possible.

#### **4. TRANSITION TO THE NEW FPA**

##### **4.1. Transition of applicable rules**

The new FPA enters into force as from 1 January 2008 but would only be applicable to the grant agreements concluded under the new FPA and not to the grant agreements signed under the current FPA. This approach was followed for the entry into force of the current FPA. It is important, however, to reduce the transition period as much as possible, in order to avoid the simultaneous application of different legal regimes.

Therefore, for grant agreements the implementation of which would end after September 2008, an amendment would be made to ensure that the concerned agreements follow the rules of the new FPA. Partners would also be allowed to request an earlier transition amendment for grant agreements where the implementation ends after March 2008.

##### **4.2. Transition of informatics tools**

It is important to draw the necessary attention to the transition of the informatics tools. Strong collaboration between the informatics team and the users concerned is key to the success of this transition. Following the adoption of the present concept paper by Management, it is proposed to make an appraisal of the changes which would be required for the informatics tools and to identify the workload for implementing them. On the basis of this information, the most important changes to be implemented in 2007 would be identified, whilst for other changes internal transition procedures would have to be established.



## 5. ROADMAP FOR THE ADOPTION PROCEDURES

The calendar for adopting the new FPA is challenging. However, as the procedures are clearly described in the fact sheets and as the basic rules of the new FPA would in essence not differ from the current ones, the conditions for tackling the challenge are more favourable as in 2003. It is important that with the new FPA the main guidelines and tools are made available for partners and DG ECHO staff from the start.

### 5.1. Legislative constraints regarding the adoption procedure

Pursuant to Article 238, 3 IRFR the adoption of Annex V requires a Commission decision. No such decision is required for the other legal instruments.

Pursuant to Article 16, 2 of the Humanitarian Aid Regulation, the revision of the contractual instruments, including the FPA, must be submitted to the HAC.

The current Commission decision adopting Annex V stipulates that the Director of ECHO, in association with the relevant Commission services, may make all necessary modifications to the FPA and its annexes (with the exception of Annex V). A similar provision should be inserted in the Commission decision adopting the new Annex V (with replacement of Director by Director-General).

### 5.2. Phase 1 – drafting of the FPA

- Step 1a: Drafting FPA – to be finalised by end of July.
- Step 1b: Simultaneous consultation ECHO, other Commission services and partners – to be finalised by end of July.
  - Consultation to be launched after adoption concept paper by Management through the FPA Coordination Support Group in DG ECHO, the FPA Watch Group (NGOs) and bilateral meetings with IOs per family.
  - Consultation of other services inside the Commission (DG BUDG, AIDCO, LS and SG).
- Step 2: Consolidation final version – to be finalised by beginning of September. Integration comments ECHO, partners and other DGs.

### 5.3. Phase 2 – Adoption of the FPA

- Step 3: Interservice consultation and HAC
  - ISC: documents to be submitted for ISC: text of Annex V only; for info the other contractual instruments (FPA, Annexes). ISC launched mid September.
  - HAC meeting of 27/09: submission FPA to HAC for information.

- **Step 4: Adoption by the Commission** – to be finalised by end of October. EP will then be formally informed on the new FPA.
- **Step 5: submission to Partners** – in November with signature of FPAs at Annual Partner Conference of 10-11 December 2007.
- **Step 6: entry into force** – by 1 January 2008.

#### **5.4. Phase 3 – Training and information**

- 4 Training sessions for ECHO staff: **last quarter of 2007.**
- Training sessions for NGOs (through Grant Facility – VOICE, Punto Sud): **launch last quarter 2007.**
- Training sessions for international organisations: **last quarter 2007.**
- Establishment of a self-training module for partners and ECHO staff with support of subcontractors: **last quarter 2007.**
- Training sessions on the field: **first quarter of 2008.**

## ANNEX - OTHER CHANGES

### 1. PRACTICAL IMPLICATIONS FOR THE SELECTION OF PARTNERS

#### 1.1. Changes to the selection procedure

The minimum requirements for P- and A-control mechanisms must be clearly established at principle level in the FPA whilst the practical modalities for a coherent assessment by DG ECHO will be specified in-house.

Only one FPA would be signed. It would establish the conditions for partnership in a coherent framework, the basic criteria for partnership would be the same for all partners and a transfer from A- to P-control mechanism (or vice-versa) would not require the signature of new FPA. DG ECHO would inform the partner on the type of control mechanism by letter at the signature of the contract and after each annual assessment exercise. This official notification will be made at the closure of the selection phase (November 2007 for the existing partners) and at the end of the annual assessment exercise. A partner who is interested to change from control mechanism can ask DG ECHO to consider especially his request in the next annual assessment exercise.

The APPEL-procedure and -survey will not change for the new FPA. It is however necessary to refresh them, but this will be done after the start of the new FPA.

#### 1.2. Launching the selection of partners for the new FPA

##### 1.2.1. Existing partners

As the criteria for FPA partnership will not change fundamentally under the new FPA, and as one of the objectives of the annual assessment consists in verifying whether the partners continue to comply with these criteria, the results of the last annual assessment (covering activities in 2005 and 2006) might be used for the selection of partners under the new FPA. On the basis of this information a P- or A-control mechanism will be proposed.

Partnerships with partners who have not signed agreements during the current FPA would not be automatically renewed. If such NGOs would like to become partner again, they would have to submit a new application file.

##### 1.2.2. New partners

The same procedure as the one used for the current FPA (through APPEL) will be used for new partners. The assessment procedures for new and existing partners will therefore be comparable.

### 2. OTHER ISSUES TO BE INTEGRATED IN THE FPA

- Late payment (art. 106, 3 and 5 IRFR): the need to inform the partners "in advance of the possibility that payments might be delayed for the purpose

*of approval of a report*". Partners would also not be entitled to claim interests in case of late submission of the final report.

- Applicable laws (art. 164, 1 IRFR): the FPA must identify "*Community law*" as the applicable law, "*complemented, where necessary, by national law as specified in the grant agreement*". The national law complementing Community law would be Belgian law.
- Changes to rules of nationality and origin following entry into force of Regulation on Untying of Aid (cf. solutions as introduced by Fact Sheet); annex V of the FPA would also propose a standard derogation for the procurement of goods and services in neighbouring countries.
- Concept of "urgent" operations: In the past, the adoption of a non-emergency decision following a prior (primary) emergency decision entailed problems in the area of procurement. Partners who continued their operations under the non-emergency decision did not always realise that the procurement rules under non-emergency decisions are different (no automatic application of single quotes). With a view to avoid such problems in the future, Annex V would allow the application of single quotes under non-emergency decisions for "urgent operations".
- Implementing partners: the FPA should clarify the respective roles of the partners and their implementing partners, as well as their mutual relationship.

### 3. SUSPENSION

#### 3.1. Suspension of the FPA

A distinction must be made between two forms of suspension of the FPA:

- suspension in case of non-compliance with suitability criteria: such suspension may not last longer than one year. If it does (i.e. partner has not taken all necessary measures to comply again with the suitability criteria), the FPA must be terminated automatically.
- suspension following allegations of substantial irregularities: if the allegations give rise to legal investigations (e.g. OLAF), the suspension may last as long as the investigation. After completion of the investigation, DG ECHO would have to take position (lift the suspension or terminate).

#### 3.2. Suspension of payment and payment delays

A suspension of the payment delay is only possible during the 45 days period following the approval of the report by the geographical unit. The General Conditions should incorporate the possibility to suspend the payment delays in case of late submission of the report.

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The General Conditions should allow the suspension of payments in case of presumed infringements of the rules. The purpose of such suspension would be to give the necessary time to check whether the presumed infringements have in fact occurred and, where appropriate, to rectify them.