

## FPA Watch Group Meeting

VOICE, 22 July 2003

11.00 – 16.00

### Participants:

#### NGOs and Red Cross:

Pierre GALLIEN, ACF; Jérôme LÉBOUC and Gaele NIZERY, CARE International; Jo BENNETT, CARE UK; Encarnación GUIRAO FERNÁNDEZ, CIR-Spain; Domitille Cadet, Croix-Rouge Française; Cecillie BJØRNSKOV-JOHANSEN, DanChurchAid; Diana WHITE, EU CORD; Simonetta RISAIO, Handicap International; Helen HOLDER, HelpAge International; Katleen HAYEN, IRC-Belgium; Alyoscia D'ONOFRIO, IRC-UK; Jean SASLAWSKY, Médecins du Monde International; Floris FABER, Mission East; Inge VANGODTSENHOVEN, MSF-Belgium; Rachel HASTIE, Oxfam GB; Jeannette ADRIAENSSENS, Red Cross/EU Office; Samantha CHAITKIN and Kathrin SCHICK, VOICE; Jane BACKHURST, World Vision; John KALAGE, World Vision Tanzania

#### ECHO:

Silvia ERMINI, Pablo IBANEZ, Richard LEWARTOWSKI, Beatrice MIEGE (all ECHO 4)

### Agenda:

- Presentation of the Documents
- Advancement of the Works
- Selection of Partners
- Annual Conference and Signature
- Transition to the new FPA
- Training

### Notes :

#### **On the Preamble, FPA Signature form and Provisions**

(amendments agreed by ECHO are marked with ◀)

##### A. Preamble:

The WG proposed to include “livelihoods” in addition to saving lives as part of the “prime aim” of EC humanitarian assistance. ECHO insisted that this would go beyond ECHO’s legal base; it would be appropriate in a more political document, but would render the preamble weaker as a legal document.

The WG proposed to delete the phrase “both in terms of impact, efficiency and accountability” from the paragraph beginning “ECHO will maintain a large...” ECHO agreed to delete the word “impact”. ◀

The WG proposed to add the following sub-clause to the second-to-last paragraph, after “the mandates, charters or statutes of the other”: “, recognizing also the spirit and specificity of each partner’s contribution to humanitarian action.” ECHO agreed to add some phrasing which would refer to the added value of NGOs, though perhaps in a different formulation. ◀

##### B. Signature Form:

No changes were proposed.

### C. Provisions:

**Article 4:** ECHO will not give any preference to one **code of conduct** or another: what is important is the commitment to humanitarian values that is guaranteed by adherence to a code. This adherence is not only a formality, in the sense that it will be used as part of the risk assessment, and ECHO will later ask its partners what they do to comply with the code. The point of this requirement is to encourage self-regulation in the humanitarian sector, which needs to promote humanitarian values and voluntary adherence to standardised codes, and give attention to the common points of the sector.

ECHO will add “or Charters” to the end of 4.1a). ◀

**4.1c:** the WG proposes to delete or change the reference to **professional development**. ECHO would like to keep this reference based on principle, as it helps to define the kind of organisation it would like as a partner. Alternative proposals for this paragraph include:

- changing “guarantee” to “provision”
- adding “as far as possible” before “their professional development”

The WG is to propose a rephrasing of the paragraph in writing which ECHO will consider.

**4.5:** The WG proposes to add “at least” before “once a year”. ECHO notes this request but refuses it, as this paragraph refers to the **formal obligation of ECHO to meet with the Partner** representation and not to ECHO-NGO unit which will meet with the WG more often. This clause does not limit the possibility for more frequent implementation monitoring meetings, and finds that stipulation for these less-formal meetings does not belong in the FPA.

**6.1.1:** Both a) and b) of this article are taken directly from the humanitarian aid regulation. Paragraph c) is not from this regulation, but is a result of talks with the legal authority. For “third countries in receipt of the aid”, in theory they would be **eligible for the FPA** but not to receive EC funds – ECHO would like to avoid this situation, and therefore in judging the criteria, ECHO will look first at a), then at b) if a) is satisfied. The “main headquarters” would need to be in the EU for purposes of follow-up on budgetary control, but it would suffice to have an agreement that the office with legal personality in the EU would be responsible for the budget, so that follow up on Community funds would be possible through the Member State’s public prosecutor. This way, the main headquarters (in a third country) could sign the FPA with the EU while the office in the EU Member State would have the legal personality and financial responsibility (the FPA for “Families” is also related).

In the case of countries like Norway, members of the European Economic Area can have the FPA. In the case of a country like Switzerland the problem is solved through Convention 124 of the Council of Europe.

**6.1.2:** The WG suggested that some EU countries’ legislation do not require **independent audits as required for partnership with ECHO**, and thus access to the partnership may be prejudiced against organizations in such countries. When in December 2002 ECHO asked the NGOs to send their accounts, it took ECHO a few months to realise that there would be a problem, mainly in Italy, Sweden and Greece. ECHO has made contact with the governments of all these countries by May 2003, as well as some of the NGOs – enough time for an external audit to be carried out before September 2003. ECHO reports that some Italian NGOs have resolved the problem already. The Greek government made a decree on the subject with little effect. ECHO claims there is flexibility, but the organisations have to act immediately. Article 173 of the Implementing Rules of the Financial Regulation prevent ECHO from making any exception, provision, or transition period for organisations which cannot provide the past two years’ externally audited accounts.

**6.3:** The WG requested clarification. The Chairman of the Board will have to make a **sworn statement** – the presence of a notary or other public official will not be necessary. An implication is made here to the governance of the organization: the Board and executive management must be separated. Where these governing bodies overlap, the highest authority in the organization will be responsible for the sworn statement.

**8.2:** The WG was concerned about situations where NGOs and their **national governments** do

not have good relationships, its implication for the “non-governmental” qualities of NGOs, and also for the independence of ECHO vis-à-vis EU member states.

ECHO referred to a past case before the Ombudsman concerning this consultation with the national authorities, which influenced its decision to state this openly in the Provisions of the FPA, in the interests of transparency. The legal framework concerning public access to information from governments has changed to ECHO’s disadvantage. ECHO will reserve the right to ask recommendations from EU member state authorities; especially in the case of a questionable error made by a Partner, ECHO will want to check the reputation of the organisation with the national authority. There is a standard letter for this kind of check, which includes only very basic questions (is the organisation established in your country? is it legally a humanitarian/development NGO? is it in compliance with articles 93 and 94 of the financial regulation, regarding financial solvency and conflicts of interest? has it been funded by the government or another national body in a humanitarian or development operation?...). ECHO is convinced that this system will improve the transparency and control for everyone, and avoid damaging rumours.

**9.4:** The WG commented that this is not consistent with article 16.2. ECHO responded that 16.2 was to be changed (see below).

**9.5:** In practice, this can be interpreted as **10% of the organisation’s international sector** (including overseas development projects, etc.) that must be devoted to humanitarian aid in the sense of article 2 of the Humanitarian Aid regulation (including disaster preparedness, emergency rehabilitation, etc.).

**11.1:** In the case of **suspension of the FPA**, ongoing contracts will continue through to liquidation, but no new contracts will be signed during the suspension. In the case of **termination** (loss of the conditions of eligibility for the FPA), all contracts will be terminated according to the process as described in the General Conditions, following 60 days’ notice.

**11.4:** The WG asked if any mediation processes were possible, citing the example of an arbitration in the agriculture sector.

ECHO revealed a change in article 14 of the General Conditions (on Settlement of disputes), which now stipulates that a partner which allows 2 months to elapse without making a complaint to the court of first instance of the Court of Justice gives up its right to make a complaint. The EC will contest the organisation’s right to make a complaint in this case. 2 months is also the period for final liquidation.

**13:** As proposed by the WG, ECHO agreed to modify the definition of “humanity” by changing “the centrality of” to “focussing on”. ◀

**14:** In the first paragraph, the WG proposes to add the words, “and/or content specificity” after the word “sector”. ◀

In the third paragraph, the WG proposes to replace “will” with “endeavour to”. ◀

ECHO agreed to these changes in principle.

**14c:** The WG proposes to add “without prejudice to the fundamental rights of the person”. ECHO was positive towards including this, though the wording may be different. ◀

**15:** The WG found this paragraph confusing. ECHO explained it referred to monitoring by ECHO experts, and proposed to split the paragraph into 2 parts, one dealing with ECHO experts, and the other with OLAF, the Court of Auditors, etc. ◀

**16:** Referring to evaluations – always, in ECHO, carried out by external persons. In 16.2 ECHO will change the second sentence to: “These missions shall be the object of mutual discussions in order to ensure the quality of independent evaluations to be undertaken.” ◀

**16.1:** The WG proposes to add an explicit reference to the HO’s right of reply to the evaluation, as also stipulated in the General Conditions. ECHO was positive towards this kind of modification. ◀

ECHO explained that its **audit has two parts**. The first, the risk profile, focuses exclusively on establishing financial risk. The second part includes other questions relating to the wider FPA

criteria (experience, capacity, etc.).

### **Further documents**

New standard instructions relating to the Inter-Service Consultation were sent to ECHO last week and may cause further changes to some elements of the current FPA documents. Due to the absence of Mrs. Adinolfi during August, anything further for the Inter-Service Consultation will be launched in September.

ECHO presented to the group a version of the **budget nomenclature with detailed guidelines**. 4-digit budget lines may be used for Primary Emergency, while for other kinds of decisions the 6-digit versions must be used. The Watch Group noted that more explanation was needed on how to prepare the budget.

The **procurement document** (the replacement for document 14 of the 1998 FPA) is currently blocked by the Budget Authority, whose approval is essential. ECHO's "rules of origin" has found problems, as the Authority wants to give preference to EU products, then the country of the operation, whereas ECHO has been committed to using local products by preference. The debate surrounds a compromise agreement on article 168 of the Financial Regulation.

After the official documents which require approval are finished, ECHO plans to compile a single **explanatory text** (not exactly a user's guide) for the new FPA based on a series of supporting documents to include:

- notes from the ECHO management regarding implementing instructions
- The workflow document
- Note on amendments/changes to the operational contract
- Budget composition, etc.

Other supporting documents will include:

- the **Glossary**  
ECHO staff has been asked to provide terminology as well as definitions for the glossary, and asks the Watch Group for its suggestions of terminology to be included in the Glossary as well as comments on the budget terminology
- the ECHO PCM handbook
- a Partners' version of the Decision Handbook which the ECHO desk officers use (explains the different decisions possible at ECHO and their procedures)

ECHO's **timetable for the supporting documents** is to begin production in one to one-and-a-half months.

### **Selection of Partners**

ECHO's first priority is to validate the **current partners** and to have their files ready for a smooth transition to the new FPA. Each NGO's file should contain 10 documents to date, and 140 are already in that advanced state. Some 40 current partners no longer qualify for the FPA. The so-called "**Candidate**" **organisations**, which have had operational contracts with ECHO in the past but no FPA, have been reduced to 8-10 organisations, which will also be part of this first-priority group.

**NGOs that applied for the FPA in the past but never had an operational contract** will have to re-apply and start from zero. These organisations, together with those who have not applied before, will first go through a 5-question pre-selection phase, facilitated by the APPEL (application électronique), an external internet-based database with information only available to ECHO and its Partners through login and password. Ideally, upon completion of the formal application process through APPEL it should take ECHO not more than one month to reply.

For first-round applicants, the APPEL will already be partially filled out; the organisations will receive their login and password and complete and update the information. The APPEL is almost ready for the beta-testing stage, for which ECHO may need some volunteers.

The WG pointed out (with regard to Provisions article 9.2) that ECHO sent a **request for documents** to NGOs in the last few days, requiring that the document be provided **within 2 weeks, by July 31**.

ECHO's explanation for this request was the fact that the NGO unit stagiaire will be leaving their service on that date, and they will not have staff to file documents received afterwards.

(More information about eligibility criteria was discussed in relation to the Provisions in articles 6.1.1 and 9.5, above)

### **Annual Meeting – Partners Signature**

The **Annual General Meeting on 6-7 November** will be a solemn occasion at which the legal representatives (President/Director General) of the Partner organisations will formally sign the FPA. Only partners who have met the criteria by this time will be invited to attend. In principle, those partners which have been disqualified have already been notified by ECHO. Contracts en vigueur at the time of this meeting will continue normally.

The meeting, which will have a much more **media/political orientation** than usual, is planned for one full afternoon, one evening social event, and one full morning. Two important things are planned for the afternoon and the third for the next morning:

1. **Formal signature of the FPA**

2. **Open letter to the IGC**

3. EC Budget (Because the meeting will take place later than previously envisaged, the European Parliament will by that time already have made their first reading of the 2004 budget. This means that on the following morning, ECHO will be able to present the **strategic guidelines of its 3 operational units**; this is seen as another part of the strategic partnership.)

The WG expressed concern that **different interlocutors** from the Partners would be needed to sign the FPA and an open letter, on the one hand, and to discuss the strategic guidelines, on the other. VOICE and the WG are seeking solutions to make this more efficient for the participants.

ECHO would like comments on the idea of having a formal signature, open letter, and political event as well as the separate formal and technical meetings.

### **Transition and Start of the new FPA**

**The new FPA will come into force on 1 January 2004.** ECHO has faced **two options for dealing with the transition** from one set of rules to the other, and seems to have chosen the second option:

1. The rule of decision. This will mean that contract rules will depend on the rules in force when the decision was taken. It would imply that 1998-style FPA contracts could be active through mid-2005 in the worst case.
2. “Big Bang” system, depending on when contracts are signed. This means **contracts signed before 31 December 2003 would be ruled by the 1998 FPA, whereas contracts signed after 1 January 2004 would be ruled by the 2003 FPA.** It means that these “old-style” contracts would mainly be out of the system by mid-2004. Contracts may be advanced to allow for a minimum of overlap of the two systems.

The WG expressed concern that this might mean that no **contracts will be signed between September and December 2003**, as happened when the 1998 FPA came into force. ECHO

reasoned that this time, most contracts (because they relate to Global Plans) will already have been made, and those contracts responding to emergency situations are more likely to have shorter durations and therefore won't pose much of a problem.

### **Training on the new FPA**

The following ECHO training events are currently being planned for November-December 2003:

- **4 Joint trainings** of ECHO experts and Partners' experts located in the region, as a "one-off show" to take place in:
  - Managua
  - Nairobi
  - Amman
  - Bangkok
- Another **4 trainings in member states**, also a one-off show, possibly in:
  - UK
  - Germany
  - Scandinavia (possibly)
  - Brussels
  - Southern Europe (probably Italy)

The drawback is the dubious sustainability of these trainings.

The **Oxfam training** project, for Oxfam staff and open to others, will run until April 2004.

**CARITAS** will also be running a training on the new FPA.

ECHO is looking for a solution for a **permanent help-desk capacity** outside of ECHO.

ECHO will have a new colleague to run a new **Training Grant Facility for 2004**. In order to avoid the problems posed by the Grant Facility 2002, ECHO will hold a seminar in Brussels prior to the Call for Proposals, probably in January 2004. According to the Financial Regulation, the Grant Facility Programme will have to be published in the Official Journal before 31 January 2004, after which the CfP will be issued. The resulting training projects are likely to take place in the second half of 2004.

### **Follow Up**

- VOICE will circulate the text proposal formulations to the Task Force before sending them to ECHO.
- A next meeting will be planned for after the summer (September).
- Suggestions for terminology in the Glossary will be given by the Watch Group (at a later stage).