

Civil Society reaction on the simplification of the Financial Regulations

EC proposal of 14 September 2016
([COM\(2016\) 605 final](#))



(27 February 2017)

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I. Introduction

1) Three key words

- Budget Focused on Results (BFOR)
- Simplification
- Flexibility

2) Key areas of the EC proposal

- Simplification for recipients of EU funds
- From multiple layers of controls to cross reliance on audit, assessment or authorisation, and harmonisation of reporting requirements
- Allowing the application of only one set of rules to hybrid actions or in the case of combination of measures or instruments
- More effective use of financial instruments
- More flexible budget management
- Focus on results and streamlining of reporting
- Simpler and leaner EU administration
- Providing possibility for citizen engagement

3) General Assessment

The proposal constitutes an improvement compared to the existing Financial Regulations, notably as regards simplification of rules and a number of proposals such as the recognition of volunteer work, value for contribution in kind, removal of no profit principle, cross reliance on audits are particularly welcome. However a number of provisions have to be clarified.

Our analysis focuses on the provisions that we consider most relevant from the point of view of civil society organisations.

II General Principles

1) Simplification & single rule book

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*“...this proposal reduces the overall number of general financial rules applicable to the EU budget by some 25% and regroups them in a **single rule book which will replace both the Financial Regulation and its Rules of Application:***

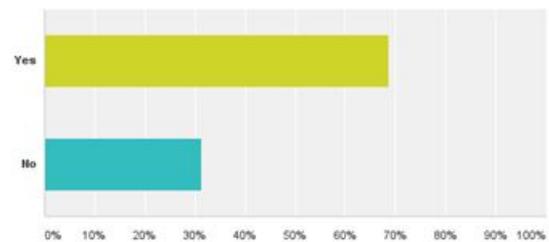
*Key provisions of the Rules of Application are moved into the Financial Regulation, while **less important elements** will be integrated if needed and **on a case by case basis** in Commission’s internal rules or in guidelines made public by the Commission....”*

CSE survey

For a great majority of respondents one single rule book would be preferable. However respondents argued in favour of rules more tailored to the type of beneficiaries and to the different instruments (grants, procurement, loans, trust funds, etc)

Q19 Would you be in favour of one single rule book including only the most important rules are set by the European Parliament / Council, and less important rules would be set by the EC?

Answered: 32 Skipped: 17



Remarks:

- Although the proposal has reduced the number of rules compared to the current financial regulations, it is still complex and long and the wording of many rules leaves room to interpretation
- It is not clear what is meant by less important elements and there is a high risk that every DG, Agency etc. will make their own rules (case by case basis)
- The review of the EP and Council should contribute to further simplify the proposal
- Once the FR adopted, a user friendly practical guide should be developed in consultation with civil society.

2) Focus on results

(Introduction 6.1)

*“...the financing of projects is delinked from the **reimbursement** of the costs incurred by the recipients of EU funds: it **depends directly on the results delivered** on the ground. What matters is either the fulfilment of certain conditions as set out **ex ante** in the basic act or Commission Decisions **and/or** the achievement of results measured through performance indicators (**ex-post**). Such system enhances ownership/commitment by the recipients of funds to achieve results.”*

Remarks:

- linked to article 121. The Commission wants to simplify the use of lump sums, unit costs, and flat rates and allow payment based on output and results rather than on reimbursement of costs, or against conditions to be fulfilled
- The EC argues that they want to move from considering the value of inputs in lump sums such as man days, number of travels, days of mission to concrete outputs such as conference, festival, prototype... This would indeed simplify things. However how this system would apply to operating grants?
- It is not clear if the term “results” is used to mean “outputs” or “impact”. If it is interpreted as impact, it may not applied equally to all types of projects, as it usually requires time to see the impact of an intervention, for instance in the social field.

Proposal:

- Concrete examples and definitions should be included in the article and not just in the introductory explanations. In particular as regards outputs and fulfillment of conditions as outlined in the following articles.
- Replace “results” with “outputs” and define outputs. The term used in 6.1 should be the same as in art. 175.
- Further discussions with civil society on the concrete implementation are needed

3) Output

(Art. 175(2) and 4(d))

*“Where possible and appropriate, lump sums, unit costs or flat rates shall be determined in such a way as to **allow their payment upon achievement of concrete outputs.**”*

*“where possible, **the essential conditions triggering the payment, including, where applicable, the achievement of outputs;**”*

Remarks:

- CSE survey: main answer “It depends...”; in certain sectors there is a high risk to fail or only partly achieve outputs
- What about failures you are not responsible for ?
- Result based approach is not always possible in all contexts, for instance for NGOs that operate in difficult environments or with a vulnerable or discriminated public. When NGOs do invest resources, but fail to achieve outcomes due to external factors, this should also be considered a result.

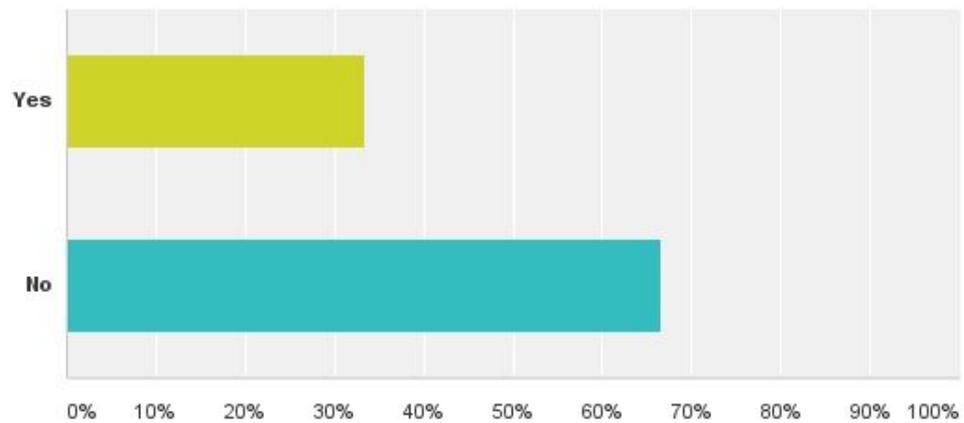
Proposal:

- Clear definition of “output” and conditions for payment

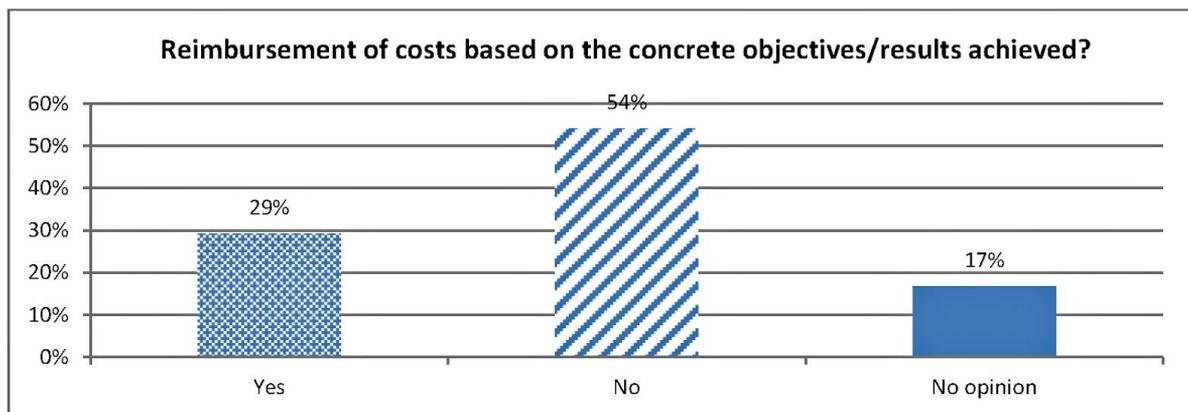
CSE survey:

Q20 Would you accept to be reimbursed your costs based on the concrete objectives/results achieved?

Answered: 30 Skipped: 19



EU public consultation



92% of NGOs disagreed with the proposal. The main arguments put forward are:

- Difficulty to measure the impact of projects or actions as NGOs operate in sectors and areas largely dependent on external factors that cannot be controlled;
- Inapplicability and risk of adverse effects in the case of projects for example in the fields of democracy promotion, human rights, where results are often incremental and only visible in the long run. This risks concentrating grants with large organizations and research institutes with the capacity to pre-finance substantial amounts over mid- to long-term. If implemented, a mix of funding modalities to appropriately support different sectors and actors must be agreed;
- Possible distortion of the incentives of stakeholders in development programmes;
- Projects are useful to test new approaches which by themselves are liable to failure;

- Experience has demonstrated inadequate testing of the approach and a lack of support by implementing agencies and contractors. Valuable resources would be used for consultancy evaluation of payment by results instead of being used in development grants.

4) Transparency

whereas 14

*“The principle of transparency, enshrined in Article 15 TFEU which requires the institutions to work as openly as possible, implies, in the area of the implementation of the budget, that citizens are able to know where, and for what purpose, funds are spent by the Union. Such information fosters democratic debate, contributes to the participation of citizens in the Union’s decision-making process and reinforces institutional control and scrutiny over Union expenditure. **Such objectives should be achieved by the publication, preferably using modern communication tools, of relevant information concerning all recipients of Union funds which takes into account such all recipients’ legitimate interests of confidentiality and security and, as far as natural persons are concerned, their right to privacy and the protection of their personal data.** Institutions should therefore adopt a selective approach in the publication of information, in accordance with the principle of proportionality. Decisions to publish should be based on relevant criteria in order to provide meaningful information”*

Remarks: This covers the publication of the Financial Transparency System. No changes compared to current regulations.

Article 36

Publication of information on recipients and other information

*1. The Commission shall make available, in an appropriate and timely manner, **information on recipients, as well as the nature and purpose of the measure financed from the budget, where the latter is implemented directly** in accordance with point (a) of Article 61(1).*

The obligation set out in the first subparagraph shall also apply to other institutions when they implement the Union budget.

*The information on recipients of Union’s funds implemented under direct implementation shall be **published on an internet site of the Union institutions, no later than 30 June of the year following the financial year in which the funds were legally committed.***

*2. The information referred to in paragraph 1 of the first subparagraph shall be made available, **having due regard for the requirements of confidentiality and security, in particular the protection of personal data** and shall include the following:*

- (a) the name of the recipient;*
- (b) the locality of the recipient;*
- (c) the amount legally committed;*

(d) *the nature and purpose of the measure.*

.....

The internet site of the Union institutions shall contain at least a reference to the address of the website where the information can be found if it is not published directly on the dedicated place of the internet site of the Union institutions.

.... As far as personal data are concerned, the information shall be removed two years after the end of the financial year in which the amount was legally committed. The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

4. The publication shall be waived if such disclosure risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the recipients.

....

Remark:

This is much more detailed compared to Article 35 of the current regulations. It also specifies clearly the existence of a dedicated internet site, but also allows the possibility to access this in specific websites.

Proposal:

- Financial Transparency System should be explicitly mentioned in the article
- Information available should include payments that have been effectively disbursed when closing rather than commitments or both
- The information available on the FTS and specific websites should be consistent and links should be made available from one to the other
- Maintain protection of data and possibility for waiver in case of risk of violation of fundamental rights

Article 183

Transparency

1. Grants shall be awarded following a publication of calls for proposals, except in the cases

referred to in Article 188.

2. All grants awarded in the course of a financial year shall be published in accordance with

paragraphs 1 to 4 of Article 36.

3. Following the publication referred to in paragraphs 1 and 2, when requested by the European

Parliament and the Council, the Commission shall forward a report to them on:

(a) the number of applicants in the past year;

(b) the number and percentage of successful applications per call for proposals;

(c) the average duration of the procedure from date of closure of the call for proposals to

*the
award of a grant;
(d) the number and amount of grants where the ex post publication obligation was waived
in
the past year in accordance with paragraph 4 of Article 36.*

Remarks:

- work programmes are no longer published before the calls for proposals. This creates issues as regards predictability of funding opportunities.
- Information on the grants awarded is made available only on request to the European Parliament and the Council while before it was partly available on websites, partly in the annual report of the authorising officer by delegation (see current article 128)

Proposal:

- Maintain publication of the work programmes ahead of the calls for proposal in the thematic websites
- Information at paragraph 3 should be available on programme websites

III Ways of funding

1) No profit principle

(Explanations 1.1.1)

“the practical importance of the no-profit principle has diminished substantially: revenue-generating projects are in principle supported through financial instruments. For projects that are in principle not revenue-generating, the no profit principle creates disincentives: beneficiaries are not encouraged to ensure that their projects become sustainable or profitable. This has in turn a negative impact on the economy.”

Remarks:

- Has disappeared from FR
- Non profit rule has indeed an adverse impact on recipients of grants. It acts as a disincentive for civil society organisations to look for extra funding or to constitute and maintain reserves, affecting therefore the their sustainability or the fulfillment of legal obligations (e.g. mandatory reserve in Belgium for salary costs, allowing profit to be used to build a reserve for contractual obligations with suppliers or investment in Germany, other rules in the UK or the NL encouraging CSOs to make some profit to build reserves)

Proposal: CSE supports the removal of this principle.

2) Forms of Union contribution

(Art. 121)

Union contributions in direct, shared and indirect implementation shall help achieve a Union policy objective and results specified and may take any of the following forms:

- (a) **reimbursement of eligible costs actually incurred;**
- (b) **unit costs**, which cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit;
- (c) **lump sums**, which cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance;
- (d) **flat-rate financing**, which covers specific categories of eligible costs, which are clearly identified in advance, by applying a percentage;
- (e) **financing not linked to costs of the relevant operations**
- (f) a **combination** of the forms referred to in points (a) to (e).

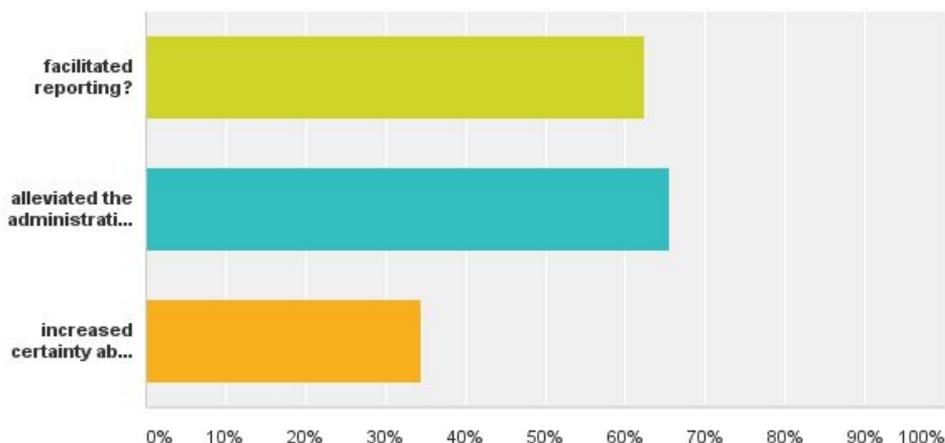
Remarks:

- In principle this could lead to simplifying the implementation of funds
- Paragraph (e) is new. It would be based on the fulfillment of certain conditions or to the achievement of results as measured by previously agreed milestones or through performance indicators. (see whereas 57) which need to be further clarified

CSE survey:

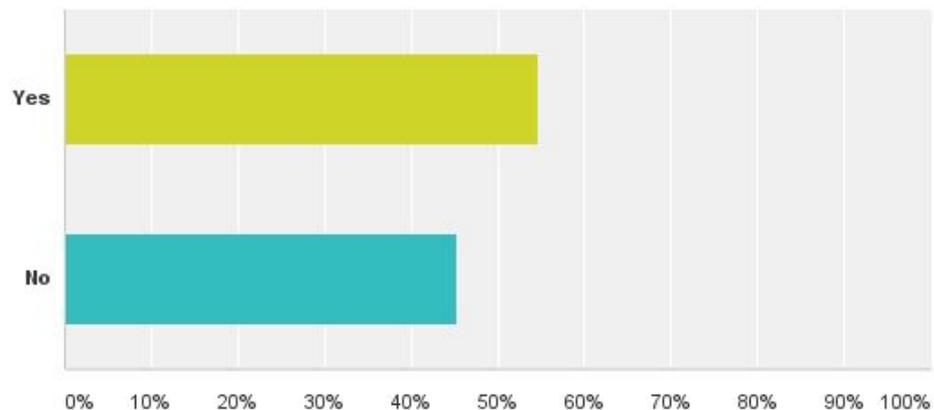
Q4 Have the use of lump sums, unit costs or flat rates... (multiple choice)

Answered: 32 Skipped: 17



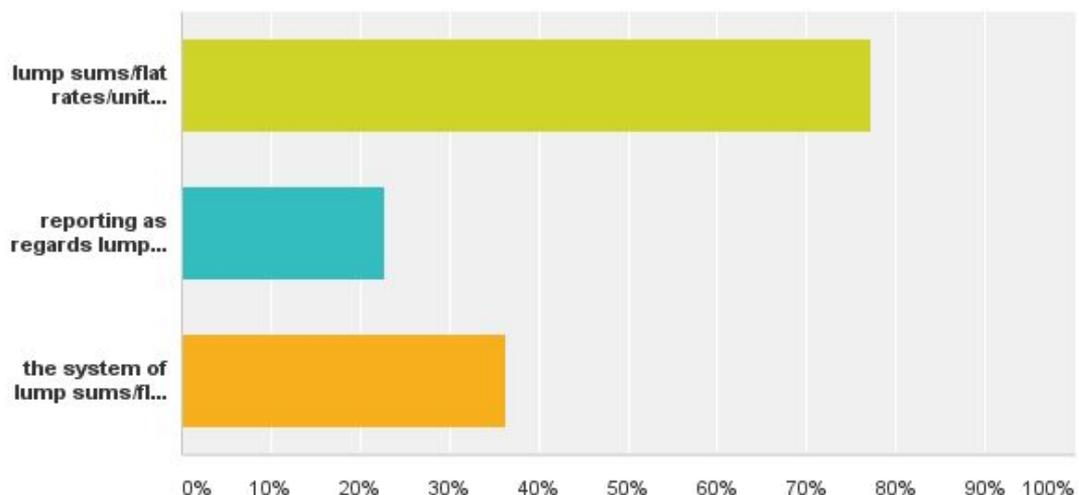
Q5 If you had the possibility to choose between the reimbursement of actual costs and the payment of lump sums, flat rates or unit costs, would you still prefer the reimbursement of actual costs?

Answered: 42 Skipped: 7



Q6 If yes, why? (multiple choice)

Answered: 22 Skipped: 27



The results of CSE survey is in line to the overall response to the EU public consultation. CSE respondents have noted that the possibility to use these new facilities (lump sums, flat rates and unit costs) is in general positive, but that because of additional reporting documents that are in the end asked by Commission services, the administrative burden is then in practice not alleviated. Also it becomes unclear what documents need to be kept for audit purposes.

As mentioned also by a majority of respondents to the EU public consultation, these facilities do not always allow to cover real cost. For instance in education and youth grants, the lump sums foreseen for coordination and dissemination are lower than the real costs incurred in a majority of countries. Lump sums for the organisations of events are riskier because of unforeseen circumstances: eg cancellation of flights, illness of participants, etc). It is therefore recommended to raise the level of lump sums and unit costs to the actual reality of costs. Furthermore some of these facilities such as flat rates are not always compatible with national regulations.

Proposals:

- Propose that the choice between lump sums, unit costs, reimbursement of expenses incurred etc. should be left to the beneficiary and not imposed at program level. However, the rules in terms of financial reporting and the forms to be filled in should be known in advance, at the time of the application. The system chosen should avoid double accountancy. To raise the level of lump sums and unit costs within the different programmes
- Thoroughly analyse the implications of a payment by result contract model before introducing such as system
- Allowing for a qualitative assessment of the project results
- Clarify conditions for financing not linked to costs of the relevant operations

3) Scope and forms of grants

Whereas 124

*“The nature of bodies which may receive **operating grants** should be clarified since the notion of bodies pursuing an aim of general Union interest is covered by the notion of bodies having an objective forming part of and supporting a Union policy. In addition, the restrictive definition of a body pursuing an aim of general Union interests should be removed.”*

New Article 174

*Scope and form of grants 1. This Title applies to grants awarded under direct implementation. 2. Grants are direct financial contributions, by way of donation, from the budget in order to finance any of the following: **(a) an action intended to help achieve a Union policy objective ('action grants');** **(b) the functioning of a body which has an objective forming part of, and supporting, a Union policy ('operating grants')**. In the case of an operating grant, the grant shall take the form of a financial contribution to the work programme of the body...*

Remarks:

- “Forming part and supporting a Union policy” could be interpretatively narrowly and limit grants to very specific actions. CSOs seem to be considered as simply implementing public policy in a defined area instead of contributing to shaping it and bringing forward citizen’s concerns.
- “general Union interests” is more fit for operating grants

Proposal:

- Keep the wording of the current FR on pursuing an aim of general Union interest “and amend it so as to ensure that the contribution of a Union policy includes both its development, implementation and evaluation:

4) Single lump sums

(Art. 176)

„A lump sum may **cover the entire eligible costs of an action or a work programme** ('single lump sum').

*Single lump sums may be determined **on the basis of the estimated budget**. The budget shall comply with the principles of economy, efficiency and effectiveness. The compliance with those principles shall be verified *ex-ante* at the time of evaluation of the grant application.”*

Remarks:

- Based on a estimated budget to show the co-financing
- More flexibility for the beneficiary since you don't have to spend funds on certain categories
- Need to clarify modalities for implementation and ensure that real costs are covered

CSE survey indicates that for a majority of organisations there would be a preference for lump sums for both projects and operating grants provided that the system allows in practice to alleviate the reporting burden.

Proposal:

Conditions for checks and controls are to be further refined so as to ensure certainty for applicants. The possibility for the reimbursement of real cost incurred must be maintained.

According to the explanatory remarks, “controls concentrate on the fulfilment of the conditions triggering the payment (e.g. whether a supported European movie was produced with the needed quality and distributed with the needed quantity, whether an Erasmus student actually studied abroad, etc.). No reporting on the costs actually incurred by the beneficiary is required. If the conditions triggering the payment were not fulfilled or if the agreed activities were implemented poorly, partially or late, the Commission shall reduce the amount of the grant proportionately to the failure and to recover amounts unduly spent.”

Article 177

Checks and controls on beneficiaries related to lump sums, unit costs and flat rates

1. *The authorising officer responsible shall check, at the latest before the payment of the balance, the fulfilment of the conditions triggering the payment of lump sums, unit costs or flat-rates, including, where required, the achievement of outputs. In addition, **the fulfilment of those conditions may be subject to ex post controls.***

*The amounts of lump sums, unit costs or flat-rate financing determined ex ante by application of the method authorised by the authorising officer responsible or the Commission in accordance with Article 175 **shall not be challenged by ex-post controls** without prejudice to the right of the authorising officer responsible to reduce the grant in accordance with paragraph 4 of Article 127.*

Where lump sums, unit costs or flat rates are established on the basis of the usual cost accounting practices of the beneficiary paragraph 2 of Article 179 shall apply.

2. *The conditions triggering the payment of lump sums, unit costs or flat-rates shall not require reporting on the costs actually incurred by the beneficiary.*

3. *Payment of the grant on the basis of lump sums, unit costs or flat-rate financing shall not affect the right of access to the statutory records of the beneficiaries for the purposes referred to in Articles 178 and 124.*

Article 179

Usual cost accounting practices of the beneficiary

1. *Where recourse to the usual cost accounting practices of the beneficiary is authorised, the authorising officer responsible may assess compliance of those practices ex ante with the conditions set out in paragraph 4 of Article 175 or through an appropriate strategy for ex post controls.*

2. ***If the compliance of the beneficiary's usual cost accounting practices with the conditions referred to in paragraph 4 of Article 175 has been established ex ante, the amounts of lump sums, unit costs or flat-rate financing determined by application of those practices shall not be challenged by ex post controls. This does not affect the right of the authorising officer responsible to reduce the grant in accordance with paragraph 4 of Article 127.***

3. ***The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary are compliant with the conditions referred to in paragraph 4 of Article 175 if they are accepted by national authorities under comparable funding schemes.***

Remarks:

- Certainty on acceptance of costs only if these are defined ex ante or if a methodology for calculating is accepted ex ante. Related documents must be kept.

- Ex post audits will cover fulfillment of conditions for the acceptance of payments: eg actual delivery of an action with the quality required.

Proposal:

- Better clarify notions of delivery and quality (eg what is the sufficient quality of a movie and minimum of copies to be distributed) and type of proof of delivery possibly ex ante in contract, otherwise risk of diverging interpretation by auditors

5) Multi-annual Grants

(Article 126)

Financial framework partnerships

*(c) the duration of the partnership may not exceed **four years** save in duly justified cases;*

Remarks: the duration of partnerships is new

Proposal:

In order to be more consistent with duration of the MFF (see also the European Parliament's proposal), we suggest to raise the maximum number of years of partnership to **five** years.

6) Financial Instruments (articles 2, 201, 202)

'financial instruments' means Union measures of financial support provided from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with other forms of financial support or with funds under shared implementation or EDF funds;

In recent years the Union has increasingly used financial instruments that allow a higher leverage of the EU budget. The proposal includes a number of rules to ensure transparency and EP and EU Council involvement in decisions on the Financial Instruments.

Remarks:

- Increased transparency and rules on decision-making are welcome. Nonetheless there are concerns from CSOs that such instruments can be applied in an increasing variety of EU policies and programmes, while they are not fit for CSOs engagement.

CSE survey:

- 44, 44% against an increased use of financial instruments, while 37,04% had no opinion, and only 18,52 % were in favour.

Proposal:

- The use of financial instruments should be limited in certain sectors which by their nature are not adapted to their use or would exclude certain actors such as civil society organisations: eg social sector, culture, research...

7) Trust funds

EC proposes to allow for the establishment of EU trust funds also for emergency, post-emergency or thematic actions within the EU (and not only for third countries). Trust funds are decided by the European Commission. EP and Council are only informed or can intervene on reporting.

Examples include cross border activities, but it is not clear what thematic actions which are not linked to emergency would be covered.

CSE survey respondents were little aware of the use of trust funds. A majority among those who knew disagreed with an increase of their use. In addition two thirds of those aware consider that trust funds are not managed in a transparent and accountable manner and that procedures are unclear. In particular trust funds tend to exclude smaller NGOs, country and regional ownership is not ensured because of lack of consultation with local authorities and civil society. In development humanitarian and emergency aid, the system does not leverage new funding but leads to a reduction of donors: NGOs need to find co-funding and cannot claim anymore from national agencies or international organisations that are involved in the trust funds. Because of the volume of the funds involved NGOs tend to become in practice implementing agencies rather than implementers, diverting them from their main mission

Article 227

Trust Funds

*1. For emergency, post-emergency or thematic actions, the Commission may create, after informing the European Parliament and the Council, trust funds under an **agreement concluded with other donors**. The constitutive act of each trust fund shall define the objectives of the trust fund. The Commission decision establishing the trust fund shall include a description of the fund's objectives, the justification for its creation in accordance with paragraph 3, an indication of its duration and the preliminary agreements with other donors.*

2. The Commission shall submit its draft decisions concerning the establishment, the extension and the liquidation of a Union trust fund to the competent committee where provided for in the basic act under which the Union contribution to the Union trust fund is provided.

*3. Union trust funds shall comply with the **following conditions**:*

*(a) there is **added value to the Union intervention**: trust funds shall only be created and implemented at Union level where their objectives, in particular by reason of their scale or*

potential effects, may be better achieved at Union level than at national level;
 (b) Union trust funds shall bring **clear Union political visibility and managerial advantages** as well as better Union control of risks and disbursements of the Union and other donors’

contributions. They should not be created if they merely duplicate other existing funding channels or similar instruments without providing any additionality.

.....

5. Union trust funds shall be created for a limited duration determined in their constitutive act. This duration may be extended by a decision of the Commission upon request of the board of the trust fund concerned. The European Parliament and/or the Council may request the Commission to discontinue appropriations for that trust fund or to revise the constitutive act with a view to the liquidation of the trust fund, where appropriate. In such an event, any remaining funds shall be returned on a pro rata basis to the budget as general revenue and to the contributing Member States and other donors.

Article 228

Implementation of trust funds

1. Union trust funds shall be implemented in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination and equal treatment, and in accordance with the specific objectives defined in each constitutive act.

2. Actions financed under Union trust funds may be implemented directly by the Commission pursuant to point (a) of Article 61(1) and in indirect implementation with the entities pursuant points (i), (ii), (iii), (v), and (vi) of Article 61(1)(c).

.....

4. The contributions of the Union and of the donors shall not be integrated in the budget and shall be lodged in a specific bank account. The specific bank account of the trust fund shall be opened and closed by the accounting officer. All transactions made on the bank account referred to in the third paragraph during the year shall be properly accounted for in the accounts of the trust fund.

....

Remarks:

- Actions directly managed by the European Commission and not included in the EU budget with limited control of the budgetary authority.
- No definition of thematic actions and how they would be applied to internal policies
- No provisions on publicity of the actions or application procedures: NGOs have experienced significant difficulties in getting timely and relevant information to access funding from the different Trust Funds
- As an important part of trust funds are managed through national agencies that applied different rules this makes their implementation cumbersome
- Trust funds can be a flexible tool to deal with humanitarian emergencies.

Proposal:

- Need for clarity on what actions would be covered
- Use of trust funds should be limited to external actions and contribute to the achievement of the Sustainable Development Goals.
- Call for a thorough evaluation of the existing trust fund mechanisms before proposing new ones.
- Avoid duplication of too many parallel instruments and rather build on the existing ones
- Increase transparency on calls for proposals and implementation. As these funds are managed and disbursed by the European Commission, they should be included in the Financial Transparency System
- Apply proposed simplified rules also to trust funds management

IV Contributions

1) In kind

(Art. 184)

*“Co-financing may take the form of the beneficiary’s own resources, income generated by the action or work programme or financial **or in-kind contributions from third parties.**”*

*Other contributions in kind (apart from volunteering) from third parties **shall be presented separately from the contributions to the eligible costs in the estimated budget.** Their approximate value shall be indicated in the estimated budget and shall not be subject to subsequent changes.*

Remarks:

- This is progress as contribution in kinds were only allowed as an exception pending approval of an authorising officer. In practice many contracts within several programmes indicated that contributions in kind were not accepted.
- There is no definition of what is a contribution in kind and how to estimate the value

Proposal:

- Include a definition of contributions in kind that would fit NGOs such as temporary assignment of workers, equipment, supplies, meeting facilities and services, etc (see AFD and USAID guidelines)

2) Co-financing

(article 184)

“Grants shall involve co-financing. This means that the resources necessary to carry out the action or the work programme shall not be provided entirely by the grant.

*Co-financing may take the form of the beneficiary's own resources, **income generated by the action or work programme** or financial or in-kind contributions from third parties".*

....3. As an exception to paragraph 1 **an external action may be financed in full by the grant** where this is essential for it to be carried out. In such a case grounds shall be provided in the award decision.

Remarks:

- Co-funding remains a rule apart from external actions
- The level of co-funding should not defined in the FR as to allow sufficient flexibility for specific measures and programmes
- Income generated by the action or the work programme (operating grant) can also be considered as co-funding
- Positive insertion of an exception for external actions

Proposals:

- Allow to renegotiate co-funding requirements during project implementation within the maximum percentage share allowed in the guidelines of the call
- maintain current rules that allow for the co-financing requirements to be satisfied over the implementation period of a project and do not require the EC co-financing to be earmarked to specific budget heading
- Rephrase exception to the co-funding rule for external actions so as to focus on an ex ante assessment of compliance with EC rules and procedures rather than on "where this is essential for it to be carried out"

3) Volunteer Work

Article 131

*"In order to facilitate the participation of small organisations in the implementation of the EU policies in an environment of limited availability of resources, **it is necessary to recognise the value of the work provided by volunteers as eligible costs**. As a result, such organisations may rely to a greater extent on volunteers' work **for sake of providing co-financing** to the action.*

*Without prejudice to the maximum co-financing rate specified in the basic act, in such cases, the **Union grant needs to be limited to the estimated eligible costs other than those covering volunteers' work**. As volunteers work is a work provided by third parties without a remuneration being paid to them by the beneficiary, the limitation avoids reimbursing costs which the beneficiary did not incur. "*

Remarks

In CSE survey an overwhelming majority of respondents was in favour of including contributions in kind as co-funding. Furthermore civil society organisations have been

arguing for the recognition of volunteer work as eligible expense for many years. We are therefore strongly in favour of this proposal.

Proposal:

Replace “the work provided by volunteers” with “volunteer engagement” or “volunteering”

Art. 175 (8)

*“Beneficiaries may declare **personnel costs for the work carried out by volunteers** under an action or work programme, on the basis of unit costs authorised in accordance with paragraphs 1 to 6”.*

Remarks:

The same conditions as for unit costs apply: an amount per unit needs to be defined, They must be based on estimates using objective data such as reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices or statistical data.

Proposal:

- Several organisations find the system complicated. A meeting with the European Commission involving relevant DGs would be useful.
- Define volunteering as to avoid possible abuses of the system: eg using using volunteer’s work to replace paid staff.

Art. 184 (2)

*“Contributions **in kind** from third parties in the form of **volunteers’ work** referred to in paragraph 8 of Article 175 shall be presented as **eligible costs** in the estimated budget. They shall be presented separately from the other eligible costs.”*

Remarks:

- Costs to be used as co-financing

Art. 180 (2b)

“where the estimated eligible costs include costs for volunteers’ work referred to in paragraph 8 of Article 175, the grant shall not exceed the estimated eligible costs other than the costs for volunteers’ work.”

Remarks:

- Technical limitation since volunteers work is free of charge

V Funding Lifecycle

1) Guarantees

(Recital 91)

*“Sound financial management should require that the Commission protects itself by requesting guarantees at the time of paying pre-financing. The requirement for contractors and beneficiaries to lodge **guarantees** should **not be automatic**, but should be **based on a risk analysis**.”*

CSE survey:

Many CSOs, and in particular smaller organisations reported difficulties in obtaining a bank guarantee. As a result of the financial crisis, this becomes even more difficult.

Remarks:

- There is no improvement compared to the current rules

Proposals:

- CSE proposes to amend this article so as to apply such risk analysis only for pre-payments above a certain amount (250.000€)

2) Overhead

Art. 175 (6)

*“The authorising officer responsible **may** authorise or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to a **maximum of 7 %** of total eligible direct costs for the action. A **higher flat rate may be authorised** by a reasoned Commission decision.”*

Remarks:

- The maximum of 7 % has not been changed
- The exception for operating grants has been removed
- Possibility to increase the flat rate are always subject to a reasoned decision by the Commission
- Within Horizon 2020 a 25 % flat rate is already applied

CSE survey: More than 70% respondents find the 7% rate unreasonable and argue for a 15 % rate.

The 7% rate does not allow CSOs to recover full overhead costs on the project, and affecting therefore the sustainability of CSOs.

Proposal

- 15% should be the rule also allowing for higher flat rates and without referring to a maximum.

3) Signature of grant agreements

(article 186)

*In the case of **operating grants**, the grant agreement **shall be signed within six months of the start of the beneficiary's financial year**. Costs eligible for financing may neither have been incurred before the grant application was submitted nor before the start of the beneficiary's financial year.*

Remarks:

No change compared to current FR

Proposal: to limit to maximum 3 months after the start of the financial year or approved work programme.

The current provision is highly problematic as it creates substantial cash flow problems to CSOs who have to obtain loans from banks which is a bad use of tax payer's money. Delays in contract signing and payments have to be reduced.

See also **article 187:**

for signing grant agreements with applicants a maximum of three months from the date of informing applicants that they have been successful.

VI Audits and Controls

CSE survey respondents point out to the inconsistency in the application of rules from one directorate general to the other, or by different EC delegations for external funding. They stress that auditors should not only take into account the need for justification of an expenditure, but also its successful implementation. They point out also to the fact that officers should have also some knowledge of national rules as far as accounting practices or audit. They suggest to simplify reporting requirement and generalise the use of electronic documents.

1) Cross-reliance on assessment & audits

(Article 122)*Cross-reliance on assessment*

The Commission may rely in full or in part on assessments made by itself or other entities, including donors, insofar as these assessments were made with regard to conditions equivalent to those set out in this Regulation for the applicable method of budget implementation. To this end, the Commission shall promote the recognition of internationally accepted standards or international best practices.

(Article 123)*Cross-reliance on audits*

Where an audit based on internationally accepted standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of the Union contribution, that audit shall form the basis of the overall assurance, as further specified, where appropriate, in sector specific rules.

(Article 126, 8)

“The Commission shall endeavour to harmonise its reporting requirements with other donors.”

(Article 149)

“In addition, in agreement with the entities or persons, the Commission may assess other rules and procedures such as the administration costs accounting practices of the entities. On the basis on the results of this assessment the Commission may decide to rely on those rules and procedures”

Remark:

The aim of these measures is to encourage reliance as far as possible on one single audit, assessment or authorisation when they meet the necessary conditions to be taken into account into the EU system. More generally rules for beneficiaries will be simplified by relying increasingly on (NGOs) procedures and policies once assessed positively.

Proposal:

- we welcome this new article as well as article 126 “the Commission shall promote the adoption of common reporting requirements through the financial framework partnership agreements concluded with its main international partners” that will contribute to reduce the administrative burden and generate efficiency gains.
- It is critical that such provisions are applied throughout the different EU funds.

2) Record-keeping

(Art. 128)

*“Recipients shall **keep records**, supporting documents, statistical records and other records pertaining to the funding, including records and documents in an electronic format, **for five years** following the payment of the balance or, in the absence of such payment, the transaction. This period shall be **three years** where the funding is of an **amount lower than or equal to 60 000 EUR.**”*

Remarks:

- The same time as in the current financial regulations. In new proposal threshold for low value grants amount is included
- Period of time is acceptable compared to national regulations (in B 8 years, in F 10 years....)

3) Ex post controls

Article 73

The ex post controls shall be carried out by staff other than those responsible for the ex ante controls. The staff responsible for the ex post controls shall not be subordinate to the members of staff responsible for the ex ante controls. Where the authorising officer by delegation implements financial audits of beneficiaries as ex post controls, the related audit rules shall be clear, consistent and transparent, and shall respect the rights of both the Commission and the auditees

Remarks:

No change compared to current article 66. There is some improvement needed in terms of clarity, consistency and transparency of rules within the different programmes. Also the right of auditees should be defined.

Proposal:

- Better define the rights of auditees
- Clear and homogenous guidelines and procedures for audits available when signing a contract
- More uniform occurrence of ex post audits
- Establish a time limit between first ex post audit report and final decision
- allow beneficiaries to contest the right of an audit to relevant authority in DG budget through a dispute settlement system

VI Other

1) Budget implementation in accordance with the principle of sound financial management and citizens' opinion

(article 54)

3. Citizens may be consulted on the implementation of the Union budget by the Commission, Member States or any other entity implementing the Union budget.

Remarks:

According to the European Commission, the proposal provides a possibility for citizens to be consulted on the implementation of the Union budget by the Commission, Member States and any other entity implementing the Union budget. This provision although welcome is quite weak as this is only a possibility (may) and not a requirement. Furthermore a dialogue with civil society organisations should be foreseen also in line with articles 10 and 11 of the TEU.

Proposal:

This provision should be reinforced in order to allow dialogue with representative associations and civil society, in line with article 11 of the EU Consolidated Treaties.

2) European Structural and investment Funds

Article 265

Amendments to Regulation (EU) No 1303/2013

New Article 30a

“Part of a Member State ESI Funds allocation may, at the request of that Member State and in agreement with the Commission, be transferred to one or several instruments established under the Financial Regulation or under sector specific Regulations or to enhance the risk-bearing capacity of the EFSI in accordance with Article 125 of the Financial Regulation. The request to transfer the ESI Funds allocation should be submitted by 30 September”.

Remark:

We are not in favour of this provision that allows to shift allocated funding from cohesion to investment policies without a proper decision system, as such a shift would be the result of only bilateral discussions between the member State concerned and the European Commission. Also the partnership principle would not be respected.

3) ESF regulation

Article 266

Amendments to Regulation (EU) No 1304/2013

Regulation (EU) No 1304/2013 of the European Parliament and of the Council is amended as follows:

1. In Article 13, the following subparagraph is inserted in paragraph 2:

"Where operations falling under point (a) of the first subparagraph also have a benefit for the programme area in which they are implemented, expenditure shall be allocated to these programme areas on a pro rata basis based on objective criteria other than the budget allocation to the programme areas."

2. Article 14 is amended as follows:

(a) Paragraph 2 is deleted.

(b) Paragraph 4 is deleted.

3. In Annex I, paragraph (1) is replaced by the following:

"(1) Common output indicators for participants

"Participants"⁵⁴ refers to persons benefiting directly from an ESF intervention who can be identified and asked for their characteristics, and for whom specific expenditure is earmarked. Other persons shall not be classified as participants. All data shall be broken down by gender.

The common output indicators for participants are:

- unemployed, including long-term unemployed*,*
- long-term unemployed*,*
- inactive*,*
- inactive, not in education or training*,*
- employed, including self-employed*,*
- below 25 years of age*,*
- above 54 years of age*,*
- above 54 years of age who are unemployed, including long-term unemployed, or inactive not in education or training*,*
- with primary (ISCED 1) or lower secondary education (ISCED 2)*,*
- with upper secondary (ISCED 3) or post-secondary education (ISCED 4)*,*
- with tertiary education (ISCED 5 to 8)*,*
- migrants, participants with a foreign background, minorities (including marginalised communities such as the Roma)**,*
- participants with disabilities**,*
- other disadvantaged**.*

The total number of participants will be calculated automatically on the basis of the output indicators.

These data on participants entering an ESF supported operation shall be provided in the annual implementation reports as specified in Article 50(1) and (2) and Article 111(1) of Regulation (EU) No 1303/2013.

- homeless or affected by housing exclusion*,*
- from rural areas**
- participants who live in jobless households*,*
- participants who live in jobless households with dependent children*,*
- participants who live in a single adult household with dependent children*,*

The data on participants under the two first above indicators will be provided in the annual implementation reports as specified in Article 50(4) of Regulation (EU) No 1303/2013. The data on participants under the last three above indicators will be

provided in the reports as specified in Article 50(5) of Regulation (EU) No 1303/2013. The data of the five indicators above shall be collected based on a representative sample of participants within each investment priority. Internal validity shall be ensured in such a way that the data can be generalised at the level of the investment priority."

Remarks:

Annex 1 of the ESF regulation provides indicators which have to be reported from managing authorities to the Commission. Therefore, all participants of each ESF funded projects have to fill in a questionnaire with different information. If these questionnaires are not completely filled in, the project does not receive any funding for this participant.

In the implementation, there are many problems with three specific indicators, as participants refuse to provide sensitive information:

- participants who live in jobless households
- participants who live in jobless households with dependent children,
- participants who live in a single adult household with dependent children

Especially when working with young people below the age of 18, their parents refuse this information as discriminatory. On top, data protection is a frequent source of concern especially as the information asked is connected to a third person.

With its proposal for a financial regulation, the Commission proposes some changes regarding these indicators so that data is collected based on a representative sample of participants at two specific moments in the funding period. These changes are not sufficient as participants would have to be contacted long after they have left the project, which does not mean any simplification. On top, our concern regarding data protection is not tackled

Proposal:

- deleting these three indicators from the ESF regulation.

4) Emergency situation and humanitarian aid

Article 186 (principle of non-retroactivity)

See Detailed explanation of the specific provisions of the proposal page 10

"Administrative procedures are simplified to enable quick and efficient response (e.g. retroactive eligibility before the submission of the application to be decided by the authorising officer responsible"

Remark:

Having a quick and efficient response in emergency situations is crucial to save more lives. Application procedures should be made as timely and smooth as possible, while ensuring the quality of the emergency response.