

Public consultation on the revision of the Financial Regulation applicable to the general budget of the Union

A) Information about contributor

1.

National public authority in EU Member State

2. Please enter name and address of your organisation (if responding as the representative of an organisation/company etc.): 200 character(s) maximum (200 characters left)

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3. If you are answering on behalf of an organization/institution, please indicate if your organisation is registered in the Transparency Register.

Not applicable (not organisation/company etc.)

4. Please enter your registration number in the Transparency Index

5. Please enter your e-mail address

6. What is your country of residence?

The Netherlands

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- Yes, my contribution may be published but should be kept anonymous (without name and contact details)
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*8. May the European Commission contact you, in case further details on the submitted information in this questionnaire are required?

- Yes
- No

* 9. Have you received financing from the EU budget as?
(more than one box can be ticked)

- a beneficiary of a grant financing
- a recipient of procurement contracts

- a recipient for financial instruments
- a delegatee asked to further implement Union funds
- other
- no funding received

(B) Items for consultation: General questions addressed to all stakeholders

1. Less rules and more clarity-a single rule book

Currently, there are two separate pieces of legislation with financial rules for the implementation of the EU budget:

- the Financial Regulation setting-up the main principles and
- the Rules of Application detailing the provisions of the Financial Regulation.

1.1. Do you find the rules and the manner in which they are set up clear enough?

- Yes
- No
- No opinion

1.2. Would you be in favour of introducing only the most important rules in one piece of legislation (a single rule book): the Financial Regulation to be adopted by the European Parliament and Council? Less important rules could be dealt with in autonomous decisions (binding) or in guidance(not-binding). Are you in favour of this change?

- Yes
- No
- No opinion

2. Preventing conflict of interests

The Financial Regulation contains strict rules for the prevention and management of conflict of interests addressed to the staff of the European Union Institutions.

It is proposed to transform this obligation to prevent conflict of interests when implementing EU funds in a general principle applicable to all persons implementing EU funds. This is to avoid a legal gap where the legislation of Member States implementing EU funds does not explicitly foresee such a provision. Are you in favour of this change?

- I agree
- I don't agree
- No opinion

3. Flexibility - use of trust funds in internal policies for funding of actions in the European Union - flexibility in case of crisis

Background

Trust Funds have become a mechanism commonly used in the field of development cooperation to pool funds from different donors and involve them in the governance of these funds. The possibility for the Commission to set up its own "EU Trust Funds" has been in place since 2012 and represents a unique opportunity for the EU to reshape its ways of working in the external field (information can be

consulted for example for the "Trust Fund Bêkou" or the "Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa") . Under the current legal framework trust funds cannot be used in internal policies.

3.1. The recent crises in the European neighbourhood and beyond have pointed at the need for flexibility in order to provide additional funding. A possible way to achieve flexibility would be to use trust funds not only for external crisis but also for internal crisis in order to pool EU funds with funds of other donors. Are you in favour of this option?

- I agree
- I don't agree
- No opinion

3.2. Another possible way to achieve flexibility would be the creation of small annual reserves in certain of the EU funding instruments for external relations per geographical area. Are you in favour of this option?

- I agree
- I don't agree
- No opinion

Comments for items 1 to 3(optional) 2000 character(s) maximum (2000 characters left)

Comments

Choosing between two options is too limited for the diversity of options potentially available. On question 3.1 we would support the creation of trust funds in internal policies only when other options have been found impossible / infeasible. A 'yes' answer should be read as a 'yes, but conditional...'. A 'no' answer is however chosen for lack of options in this question. On question 3.2 we do not see the added value of creating such reserves per geographical area, as this would limit flexibility by creating earmarked reserves.

(C) Items for consultation: specific questions for stakeholders implementing/receiving EU funds

4. Information on EU financing available in work programmes. Financing decisions & work programme (multiannual financing decisions and level of detail)

Background

EU spending programmes for the 2014-2020 periods refer to the adoption of annual or multiannual work programmes. Usually these work programmes constitute the financing decision foreseen by the Financial Regulation for a given year.

Financing decisions/work programmes are adopted by the Commission (often following a consultation process with the Member States) and provide the framework for the implementation of a programme by the Commission. The financing decisions serve two purposes: (1) they provide for the political decision for which concrete actions the funds shall be spent and (2) they provide for transparency through the publication of work programmes on EU institution's internet site in order to inform potential applicants about funding opportunities.

Already since 2012 the Commission prepares multiannual work programmes implemented via annual financing decisions. In order to synchronise the decision making process and to allow for a stable multiannual planning, the Commission now considers allowing also multiannual financing decisions. Such simplification would require a reduction in the level of detail in the work programme/financing decision in order to adopt it to changing needs and challenges over several years while keeping the elements for which a political decision is necessary.

Therefore, the Financial Regulation could only require the following elements for a financing decision/work programme: (i) objectives and results, (ii) method of implementation, (iii) total amount of the financing decision, (iv) description of the actions, (v) reference to the basic act and budget line and (vi) in case of grants criteria for eligible beneficiaries.

The Commission would like to inquire if additional publication before the publication of the call for proposals/call for tender is helpful for the applicants.

4.1 Which documents do you consult before applying for EU financing?
(more than one box can be ticked)

- Work programmes
- Calls
- Notices
- National contact points for the programme
- EU website
- National Website
- Other

4.2 Is the current timing of publication (no later than 31 March) of the work programme appropriate to you, i.e. it is sufficiently before the publication of the calls?

- Yes
- No
- No opinion

4.3 Would you need any additional information for the preparation of the application or tender if the mandatory elements were reduced as set out above in the published work programme?

- Yes
- No
- No opinion

Comments on questions 4.1, 4.2 and 4.3

- For Horizon 2020 a minimum of 6 months between publication of the work programme and the **closing** of the call would be sufficient.
- For H2020, it is unclear why question 4.2 is about the timing of the publication of the work programme and the **opening** of the call, because there is no fixed duration between the opening and closing of calls in H2020. Such a duration can vary from 2 to 5 months.
- As regards question 4.3. the answer is 'Yes' for H2020. In addition to that, for H2020 it would be unacceptable if the reduction of the mandatory elements would lead to any loss of content of the work programme itself, compared to the level of detail of the content in the current work programmes. The providing of 'additional information for the preparation' should not be chosen as an alternative to content in the work programme itself. For H2020 it is necessary in our view that the current level of detail in the content is maintained, in

order to provide for an optimal functioning of the H2020 comitology, in which Member States assist and advise the Commission on programme implementation, also in a system of multiannual work programmes with multiannual financing decisions.

5. Increased convergence of rules

Background

The Commission works with a wide variety of partners. Different rules are used in order to manage the funding depending on the type of actions and of the partners. For example, procurement rules are used (Title V of the Financial Regulation) in order to purchase services, supplies or works on its own account the public. Commission uses grant rules (Title VI of the Financial Regulation) when making a contribution either to a project carried out by an external organisation or directly to that organisation because its activities contribute to Union policy aims.

The Commission works in indirect management with certain type of partners (entities listed in Article 58(1)(c) of the Financial Regulation). Furthermore, specific rules apply to financial instruments (equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments).

For some complex actions, different types of rules are currently applied (for example grant rules and financial instrument rules when financial instruments are combined with technical assistance for the development of projects).

5.1 Would you consider as an element of simplification to have a single set of rules depending on the main type of instrument (grant, procurement, financial instrument, indirect management) through which such complex actions are implemented? (see also question 8.1)

- Yes
 No
 No opinion

5.2 Would you consider as an element of simplification to have an increased convergence/interoperability of rules between grants, indirect management, and financial instruments based on common principles such as transparency and equal treatment in order to combine the different instruments to fund a project?

- Yes
 No
 No opinion

6. Use of grants: Simplified forms of cost reimbursement (unit costs, lump sums and flat-rates)

Simplified forms of cost reimbursement encompass unit costs, lump sums and flat-rate financing. They cover all or certain specific categories of eligible/acceptable costs which are clearly identified in advance:

- a) where the coverage takes the form of an amount per unit, the EU contribution is based on a unit cost (e.g. a person-day rate for personnel costs);*
b) where the coverage is expressed in global terms, i.e. by an overall amount, the EU contribution is based on a lump sum (e.g. an amount covering the costs for organising an event of a certain scale);
c) where the coverage takes the form of a percentage applied to other categories of eligible costs or to the contribution to other categories of eligible costs, the EU contribution is based on a flat rate (e.g. flat rate covering indirect costs or other costs of the action);

Simplified forms of cost reimbursement are intended to:

- *focus the implementation and management on delivering concrete results/outputs;*

- *facilitate and simplify reporting;*
- *shift emphasis from cost based to performance based controls;*
- *simplify payment procedures as verifying accounting documents evidencing the actual costs (e.g. invoices, payslips, etc.) would no longer be required.*

The Commission is committed to use simplified forms of cost reimbursement on a larger scale in the future. It is therefore interested in the level of satisfaction of recipients of EU funds by the simplified forms currently in use.

6.1. In case you have been a recipient of EU funds and the EU reimbursed partially or fully costs based on simplified forms (for example, some costs are reimbursed on the basis of unit costs or a flat rate, or some or all costs of the action are covered by a lump sum) has this:

- facilitated reporting?
- alleviated the administrative burden?
- increased certainty about the level of the EU contribution?
- other

6.2 If you have already had the possibility to choose between the reimbursement of actual costs and the payment of lump sums, flat rates or unit costs, have you still preferred the reimbursement of actual costs ?

- Yes
- No
- lump sums/flat rates/unit costs do not cover the real costs;
- reporting as regards lump sums/flat rates is too burdensome
- the system of lump sums/flat rates/ unit costs is too complex and it's not totally clear how they are established
- other

6.3. Should the use of lump sums, flat rates become the norm rather than the exception?

- Yes
- No
- No opinion

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

- Yes
- No
- No opinion

Comments

- As regards question 6.1. on costs based on simplified forms, the newly introduced single flat rate for indirect costs for all types of participants in H2020 has increased the certainty about the level of the EU contribution and has simplified the process of preparing the budget breakdown of a project. This is an advantage, but please also refer to the answer on question 6.2 below.
- As regards question 6.2 on the choice between forms of cost reimbursement, for the newly introduced single flat rate for indirect costs for all types of participants in H2020, it is not a question of choice, because the single flat rate is the only option we have in H2020.

Because DG RTD has cancelled the option of actual indirect costs, for many participants it is not possible anymore to declare their costs based on their accounting systems which are built on actual costs. A possibility to choose between actual costs and simplified forms would facilitate participants, not this 'one size fits all' approach, which was chosen by DG RTD. 'Unit costs for clinical studies' in H2020 are an example of an option that can be chosen instead of actual costs. Although setting up this unit cost is quite complex, it facilitates participants who are willing to 'invest' in the setting up the unit cost, resulting in substantial simplification during project implementation. In general, participants still prefer actual costs in H2020, and the most common reason is the complexity on how (for example) unit costs are established.

- As regards question 6.4. on reimbursement based on results achieved, we think it is important to differentiate between type of funding, type of objective and policy area involved. For example: infrastructural projects could be partly or wholly reimbursed based on results achieved, but e.g. social exclusion projects and research/innovation projects should not (or not entirely) in our view. Therefore, it is not possible to simply answer yes or no to such a complex issue as performance related allocation and performance related accountability. For example: in Research/innovation, projects with a less predictable outcome or a higher risk profile should have a chance to be funded. When funding is based only (or mainly) on outcome, projects with a more predictable outcome will be submitted, resulting in average quality of research. In addition, if outcome or result of the research/innovation project will be the only reporting criterion, peer reviews of the results or in-depth evaluation of the impact of the outcome/results will be essential and will have a direct effect on the (amount of) funding. To guarantee these reviews to be fully independent and objective, a heavy strain will be put on the (already overloaded) reviewing system.

7. Use of indirect management: simplified rules on indirect management

Not applicable for a Member State [onderdeel 7 niet invullen]

Background

Indirect management is the implementation of EU funds that the European Commission entrusts to the entities listed in Article 58(1)(c) of the Financial Regulation. To be eligible to manage EU funds, the Commission carries out an assessment of their procedures ("pillar assessment") on accounting, internal and external controls, procedures for disbursing funds, publication and data protection to establish whether the entities' procedures are equivalent to those of the Commission.

When implementing the budget via a partner that may be eligible under both management modes (direct or indirect management), the EU must decide which management mode to apply.

The experience of the first two years of implementation and negotiations with partners has revealed shortfalls in the application of the new structure of management modes introduced by the 2012 Financial Regulation revision. Those bottlenecks mainly concern:

- i. the fact that the Commission does not sufficiently rely on the procedures of its partners and continues to exercise unnecessary control after they have passed the pillar assessment.
- ii. the risk of inconsistencies created by the application of different sets of rules for direct and indirect management. The choice between the different management modes is often considered as unclear. There are cases where the same activity can be financed by one or the other mode and that there is no justification for the different requirements imposed. It may be that the nature of organisation of Commission's partners is not sufficiently taken into account in the choice of the management mode. There is also a lack of clarity as to which rules should apply to hybrid situations (where organisations perform some tasks which fall under direct management and others which fall under indirect management).

7.1 In case you are an entity implementing EU funds in indirect management, how would you describe your experience with being subject to the current financial rules on indirect management?
(more than one box can be ticked)

- Appropriate to the nature of the activity
- Disproportionate reporting obligations
- Disproportionate controls of the Commission despite the pillar assessment
- Inconsistent application of rules for direct and indirect management
- Disproportionate requirements on the visibility of the Union action (Actions that are wholly or partially funded by the European Union incorporate information and communication activities designed to raise the awareness of specific or general audiences of the reasons for the action and the EU support for the action in the country or region concerned, as well as the results and the impact of this support.)

7.2 Do you agree that after having carried out an in-depth prior assessment of partner's procedures with positive results, the Commission could rely solely on the partner's procedures and on the concrete results achieved?

- Yes
- No
- No opinion

8. Use of financial instruments: simplified rules for Financial Instruments

The Financial Regulation defines financial instruments as Union measures of financial support provided on a complementary basis 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 grants. The Financial Regulation (Title VIII) provides for a solid regulatory framework for financial instruments including provisions on remuneration, transparency, internal control, audit and reporting.

However, negotiations with Entrusted Entities and the first years of implementation have shown a need to review the requirements in the Financial Regulation (and/or its Rules of Application), to streamline the rules and to further align the design of financial instruments on the most efficient and up-to-date market practices. For detailed information, consulting a report on financial instruments adopted by the Commission is recommended.

8.1. More efficient combination between Financial Instruments and additional forms of support:

Regulatory requirements should be streamlined and harmonised (e.g.: reporting, record-keeping, performance-based remuneration) to allow for a more efficient combination between financial instruments and additional forms of support from the Union budget (e.g. grants) provided within a single action.

Today, when financial instruments are combined with other forms of support relating to financial instruments, it is not always clear which sets of rules apply. The Commission considers that it could be clarified that the rules of the Financial Instruments could apply in such cases. Would you support this change?

- I agree
- I don't agree
- No opinion

8.2. Treatment of reflows

Reflows generated by EU financial instruments are currently treated in a differentiated way according to their nature: revenues (dividends, capital gains, guarantee fees, interest) are returned to the Union budget, whilst repayments (capital repayments, guarantees released, repayments of the principal of loans) are re-injected into the instrument which produced them. Such a differentiation leads to difficulties in recording the amounts received by the entrusted entities and consequent delays in the treatment of such amounts. Moreover, this differentiation impairs the efficiency of financial instruments since it reduces the amounts that could usefully be re-injected into high-performing financial instruments, and it increases the need for payments from the Union budget.

The Commission therefore considers necessary to harmonise the treatment of all reflows (revenues and repayments) from financial instruments, allowing their injection into the instrument which produced them. Following the end of the implementation period, all outstanding amounts would be returned to the Union budget, if, for the following programming period, the financial instrument which produced such reflows is not maintained.

Are you in favour of this change?

- I agree
- I don't agree
- No opinion

9. Final remarks

Should you want to raise specific points not covered by the questionnaire, you can include them below.

Comments (optional) 2000 character(s) maximum (2000 characters left)

- Although not the focus of your questions, but nonetheless interesting for several DGs including DG Budget, we would like to propose a **new line of thought**. At the moment ESIF-funds are ruled by shared management. We propose to explore the possibility to bring the management of Operational Programs by management authorities who have a longstanding track record of positive (system) audits under the regime of *indirect management* as meant in article 58, 1 under c of the Financial Regulation. In this regard the reliability of audit results (by national AAs) is a precondition. As a result, the management of an operational programme could be carried out on the basis of national law and national practices and means (for instance the single information single audit principle). This could lead to a considerable simplification.
- In general, in the elaboration of the Financial Regulation and other relevant legislation, we call upon the Commission to provide more (legal) clarity, in order to reduce costs and administrative burden of controls.
- And lastly, and again not the focus of your questions but frequently debated, we would like to propose a European budget calendar, structuring the availability of information and the presentation of draft amending budgets. A European budget calendar is in line with the Budget Guidelines 2017 of the Council, improving the predictability of Member States' contributions to the Union's budget, and, keeping draft amending budgets to the strict minimum and in line with the Financial Regulation. Specifically, article 41 of the Financial Regulation should be amended to provide for fixed moments during the year to present draft amending budgets.