Annex 1

Aid effectiveness commitments in the area of TC

The international community agreed on concrete commitments towards aid effectiveness laid down in two major agreements: the Paris Declaration (March 2005) and the Accra Agenda for Action (September 2008). At the level of the EU, agreement was reached on additional and even more ambitious commitments, captured in the EC Backbone Strategy on Technical Cooperation and Project Implementation Units (July 2008). The Backbone Strategy is a response to both the lessons of the past (notably the recommendations by the European Court of Auditors' Special Report on the effectiveness of technical assistance) as well as the new demands regards aid delivery in the context of the shift towards sector and programme based approaches.

Key excerpts from the international commitments with respect to technical cooperation and capacity development, as well as the key recommendations from the European Court of Auditors, are quoted below.

Key excerpts from Paris Declaration on Aid Effectiveness (March 2005)

21. Donors commit to:

Use country systems and procedures to the maximum extent possible. Where use of country systems is not feasible, establish additional safeguards and measures in ways that strengthen rather than undermine country systems and procedures (Indicator 5).

Avoid, to the maximum extent possible, creating dedicated structures for day-to-day management and implementation of aid-financed projects and programmes (Indicator 6).

Adopt harmonised performance assessment frameworks for country systems so as to avoid presenting partner countries with an excessive number of potentially conflicting targets.

Partner countries strengthen development capacity with support from donors.

22. The capacity to plan, manage, implement, and account for results of policies and programmes, is critical for achieving development objectives from analysis and dialogue through implementation, monitoring and evaluation. Capacity development is the responsibility of partner countries with donors playing a support role. It needs not only to be based on sound technical analysis, but also to be responsive to the broader social, political and economic environment, including the need to strengthen human resources.

23. Partner countries commit to:

Integrate specific capacity strengthening objectives in national development strategies and pursue their implementation through country-led capacity development strategies where needed.

24. Donors commit to:

Align their analytic and financial support with partners' capacity development objectives and strategies, make effective use of existing capacities and harmonise support for capacity development accordingly (Indicator 4).

Indicators:

Indicator 4: **Strengthen capacity by coordinated support**[5]: 50% of TC flows are implemented through coordinated programmes consistent with national development strategies by 2010

Indicator 6: **Strengthen capacity by avoiding parallel implementation structures**: Reduce by two-thirds the stock of parallel implementation PIUs by 2010

Indicator 9: **Use of common arrangements or procedures**: 66% of aid is provided in the form of programme-based approaches by 2010

5 *EECD/DAC definition of coordinated Technical Cooperation id provided at the end of this Annex*

Key excerpts from Accra Agenda for Action - September 2008 (part 1)

Developing countries will strengthen their capacity to lead and manage development

14. Without robust capacity-strong institutions, systems, and local expertise developing countries cannot fully own and manage their development processes. We agreed in the Paris Declaration that capacity development is the responsibility of developing countries, with donors playing a supportive role, and that technical co-operation is one means among others to develop capacity. Together, developing countries and donors will take the following actions to strengthen capacity development:

i. Developing countries will systematically identify areas where there is a need to strengthen the capacity to perform and deliver services at all levels – national, sub-national, sectoral and thematic, and design strategies to address them. Donors will strengthen their own capacity and skills to be more responsive to developing countries' need.

ii. Donors' support for CD will be demand-driven and designed to support country ownership. To this end, developing countries and donors will i) jointly select and manage technical co-operation and ii) promote the provision of TC by local and regional resources, including through South-South co-operation.

iii. Developing countries and donors will work together at all levels to promote operational changes that make capacity development support more effective.

We will strengthen and use developing country systems to the maximum extent possible

15. Successful development depends to a large extent on a government's capacity to implement its policies and manage public resources through its own institutions and systems. In the Paris Declaration, developing countries committed to strengthen their systems and donors committed to use those systems to the maximum extent possible. Evidence shows however that developing countries and donors are not on track to meet these commitments. Progress in improving the quality of country systems varies considerably among countries and even where there are good-quality country systems, donors often do not use them. Yet it is recognised that using country systems promotes their development. To strengthen and increase the use of country systems, we will take the following actions:

Donors agree to use country systems as the first option for aid programmes in support of activities managed by the public sector.

i. Should donors choose to use another option and rely on aid delivery mechanisms outside country systems (including parallel PIUs) they will transparently state the rational for this and they will review their positions at regular intervals. Where use of country systems is not feasible, donors will establish additional safeguards and measures in ways that strengthen rather than undermine country systems and procedures.

ii. Developing countries and donors will jointly assess the quality of country systems in a country-led process using mutually agreed diagnostic tools. Where country systems require further strengthening, developing countries will lead in defining reform programmes and priorities. Donors will support these reforms and provide CD assistance.

iii. Donors ill immediately start working on and sharing transparent plans or undertaking their Paris commitments on using country systems in all forms of development assistance; provide staff guidance on how these systems can be used; and ensure that internal incentives encourage their use. They will finalise these plans as a matter of urgency.

iv. Donors recollect and reaffirm their Paris Declaration commitment to provide 66% of aid as programme-based approaches. In addition, donors will aim to channel 50% or more of government-to-government assistance through country fiduciary systems, including by increasing the % of assistance provided through programme-based approaches.

Key excerpts from Accra Agenda for Action (September 2008) (part 2)

We will adapt aid policies for countries in fragile situations

21. In the Paris Declaration, we agreed that aid effectiveness principles apply equally to development co-operation in situations of fragility, including countries emerging from conflict, but that these principles need to be adapted to environments of weak ownership or capacity. Since then, Principles for Good International Engagement in Fragile States and Situations have been agreed. To further improve aid effectiveness in these environments, we will take the following actions:

i. Donors will conduct joint assessments of governance and capacity and examine the causes of conflict, fragility and insecurity, engaging developing country authorities and other relevant stakeholders to the maximum extent possible.

ii. At country level, donors and developing countries will work and agree on a set of realistic peace- and state-building objectives that address the root causes of conflict and fragility and help ensure the protection and participation of women. This process will be informed by international dialogue between partners and donors on these objectives as prerequisites for development.

iii. Donors will provide demand-driven, tailored and co-ordinated capacity-development support for core state functions and for early and sustained recovery. They will work with developing countries to design interim measures that are appropriately sequenced and that lead to sustainable local institutions.

iv. Donors will work on flexible, rapid and long-term funding modalities, on a pooled basis where appropriate, to i) bridge humanitarian, recovery and longer-term development phases, and ii) support stabilisation, inclusive peace building, and the building of capable, accountable and responsive states. In collaboration with developing countries, donors will foster partnerships with the UN System, international financial institutions and other donors.

v. At country level and on a voluntary basis, donors and developing countries will monitor implementation of the Principles for Good International Engagement in Fragile States and Situations, and will share results as part of progress reports on implementing the Paris Declaration.

OECD/DAC Definition of Coordinated technical cooperation

Coordinated technical cooperation means free-standing and embedded technical cooperation that respects the following principles. *Ownership* -- Partner countries exercise effective leadership over their capacity development programmes. *Alignment* – Technical cooperation in support of capacity development is aligned with countries' development objectives and strategies. *Harmonisation* – Where more than one donor is involved in supporting partner-led capacity development, donors coordinate their activities and contributions.

Donors are invited to review all their development activities with a view to determining how much technical cooperation was disbursed through coordinated programmes that meet ***BOTH criteria*** below:

1. Have relevant country authorities (government or non-government) communicated clear capacity development objectives as part of broader national or sector strategies? (Y/N)
2. Is the technical cooperation aligned with the countries' capacity development objectives? (Y/N) ***AND at least ONE*** of the criteria below:
3. Do relevant country authorities (government or non-government) have control over the technical cooperation? (Y/N)
4. If more than one donor is involved in supporting country programmes, are there arrangements involving the country authorities in place for coordinating the technical cooperation provided by different donors? (Y/N)

Annex 2

Court of Auditors' recommendations

RECOMMENDATIONS - Court of Auditors' Special Report on TA (July 2007)

1. In its Country Strategy Papers, the Commission should make a comprehensive and structured analysis of existing institutional capacity weaknesses and of capacity development needs.
2. The Commission should develop guidelines on TA defining its role in the area of CD and providing a sound approach and tools to consider when and how to use it.
3. Design of CD projects should be improved, by facilitating effective ownership and leadership of the national part of the process, by better defining specific CD objectives and related TA requirements, by avoiding overly complex implementation structures, by being more realistic in terms of objectives to be achieved and by
planning longer implementation periods.
4. The procedures governing the project preparation and start-up phase, including the procurement of TA, should be reviewed, in order to create more time for implementation, and more flexibility should be allowed during the inception phase to adjust the project design and/or the Terms of Reference for the TA to changes in circumstances.
5. The evaluation criteria in TA tenders should be reviewed, in order to better reflect the quality and previous experience of the experts and the consultancy company.
6. More options should be considered regarding procurement possibilities to allow the best possible choice of technical expertise, including expertise from public institutions and expertise available in the beneficiary country or the region.
7. In line with the Paris Declaration commitments, the Commission should increase its use of TA through coordinated programmes and apply, where possible, implementation arrangements which encourage local ownership.
8. TA performance by companies and experts should be assessed systematically and a management information system for recording, reporting and consulting on this performance should be developed.

Annex 3

The Cycle of operations for TC support

The table on the following pages provides a summary of key action to be taken, useful questions - referred as *Guiding Questions* - to be addressed and the outputs to be produced at each main stage of the management cycle for TC support. Observe that in line with the Guidelines, the partner should take the lead and be actively involved in all stages, ideally producing the required documents necessary to solicit support from the EC.

In the case of TC components which are part of a broader programme, the analytical requirements remain much the same, however the steps in the quality assessment process will not necessarily coincide with the overall programme management cycle phases. (for instance a programme may reach the formulation phase although some aspects of the TC component are not yet fully designed).

The table is not exhaustive and in no way seeks to replace relevant official documents and instructions. See also annex 6 for relevant operational aspects and procedures related to TC support.

General points to emphasise about the management cycle for TC operations include:

- ➔ The core principle of supporting the lead role of the partner country throughout the management cycle;
- ➔ The key commitments of the EC to reduce the stock of parallel project implementation units and work towards sustainable implementation arrangements;
- ➔ The need to critically assess the need for TC, and to look at innovative ways in which any necessary TC can be provided;
- ➔ The need to help partners clearly identify and articulate the role of any proposed TC, and to assist partners in designing appropriate programme implementation arrangements which promote country ownership of the TC; and
- ➔ The key role of the Delegation in supporting quality assurance through application of the Quality Frame criteria during the identification and formulation phases.

The management cycle for TC support

Phases	Actions to be taken	Guiding Questions	Output
1. Identification	➔ During identification, the following areas of assessment/work need to be addressed with full involvement of the partner country stakeholders and, where relevant, other donors (see chapter 3): • Assessment of partner demand for TC, based on full information on costs • Assessment of the context • Assessment of existing capacity of the organisation or sector system which is going to be supported • Explore options for harmonisation with other donors interventions ➔ Analyse options for TC support, together with non-traditional inputs (incl. South-South collaboration) ➔ Reach an agreement with the Government and relevant stakeholders as to whether or not TC support is appropriate, based on evidence of partner ownership and involvement ➔ Make sure that a first formulation of objectives and expected results of the proposed TC support is prepared by the partner, as necessary facilitated by EC staff ➔ Ensure that the resources that the partner has to mobilize and deliver are/will be specified in appropriate details ➔ Assist the partner in preparing, or as last resort prepare a first estimate of support required and related approx. cost ➔ Ensure a preliminary assessment of the most appropriate financing modality (EC procedures or Pool Funding) ➔ Prepare the Identification Fiche based on partner "programme documents" ➔ Agree how the partner will conduct the process of formulation including, where relevant, support from the delegation, a time-table for follow-up work and the terms of reference for needed additional expertise for the formulation ➔ Initiate quality assurance at Delegation level, checking against the Quality Matrix (chapter 3.5) and, where relevant, using the Quality Grid (annex 4)	➔ What is the strength of the partner's demand? ➔ Is the TC support an adequate response given the institutional capacity? ➔ Is TC support relevant to context and have previous experiences of TC effectiveness taken into consideration? ➔ Has harmonization options been thoroughly explored? ➔ What form/types of TC providers may be appropriate? ➔ Is the support consistent with the Paris Declaration and EU commitments on the aid effectiveness agenda? ➔ What would be the tentative objectives, results, scope and content of the partners programme and the TC support, respectively?	Identification Fiche (IF) and where relevant ToR for formulation submitted to QSG-1 for review

The management cycle for TC support

Phases	Actions to be taken	Guiding Questions	Output
2. Formulation	➔ Update/confirm/complete the assessment undertaken during identification in collaboration with the partner(s) ➔ Assist partners in defining objectives, the "results chain", and respective roles of TC providers in a manner acceptable to the EC, and ensure agreement with relevant stakeholders. ➔ Assist the partner as necessary in the full development of design/formulation (see chapter 4) including: • Define expected results (including CD results where CD is the primary aim) and critical activities by all partners • Define the implementation time line for key activities • Detail input requirements and associated costs from all partners - not just the EC funded ones • Where necessary, analyse options and detail the programme implementation arrangements • Detail monitoring, evaluation and audit requirements • Prepare drafts of required TOR for main TC functions ➔ Ensure an adequate quality assessment at country level, using the Quality Matrix (chapter 4.6 and chapter 6.3) and the QA grid (annex 4) ➔ Provide QSG with relevant documents and adequate information on TC, following QSG instructions ➔ Take into account QSG recommendation in the final design	➔ Is the TC linked to a well-formulated partner programme with a convincing logic and results well specified? ➔ What is the most appropriate form/sources of TC? ➔ What is the results chain and how will TC contribute to results and outcomes? ➔ What is the expected implementation time-line, taking into account contextual factors, partner capacity and past experience? ➔ What are the required partner roles/ responsibilities and inputs/resources, as well as those to be provided by donors? ➔ What are the appropriate project implementation arrangements? ➔ Is the budget allocation soundly justified in terms of the envisaged results? ➔ How will performance be monitored and evaluated? ➔ What is the sustainability strategy and how will risks be managed?	➔ Action Fiche and complementary documents, including as appropriate Logical Framework Matrix and TAPs ➔ Completed Quality Assessment Grid

The management cycle for TC support

Phases	Actions to be taken	Guiding Questions	Output
3. Implementation & Monitoring	➔ Mobilization of resources: • EC resources, including required TC component are mobilized as planned; • Partner's resources ➔ Facilitate the partner's implementation of the programme in line with agreed scope (chapter 5) as needed. ➔ Ensure that the partner is performing adequate monitoring of progress towards agreed objectives (chapter 6) ➔ Promote "responsabilization" of partner country stakeholders ➔ Where relevant, ensure a process of mutual performance dialogue between TA personnel and the partner (annex 5) ➔ Participate in periodic, preferably joint reviews and assist the partner in revising the programme scope as required	➔ Is the programme achieving the desired results? ➔ Is the TC support being managed effectively in terms of planning and use of resources? ➔ Is the performance of TC to an acceptable standard, for partners and the EC? ➔ Should the EC intervene to take remedial actions, or agree on modifications to programme scope? ➔ Is the partner involved in the monitoring? ➔ Are the TC providers accountable to PGs?	Monitoring and review reports. Reports on mutual performance dialogue Records of decisions on remedial action taken
4. Evaluation	➔ Assess with government and partners the relevance, efficiency, effectiveness, impact and sustainability of t he programme, the added value of the TC component, as well as the appropriateness of chosen implementation modalities (chapter 6) ➔ Ensure that evaluations' conclusions and transferable lessons feed back into future policy making and programming by the EC and by partners	➔ What has been/is being learned and what are the implications for future policy and programming? ➔ See evaluation questions in chapter 6	Evaluation reports

Annex 4

Quality Assessment Grid

Programme: …….. **Total amount:** ……..

Amount of the TC component: ……..……..

	Purpose of TC component (more than one possible option)	***YES/NO***
1.	Capacity development of organisations and individuals	
2.	Providing policy and/or expert advice (or other knowledge products) made available	
3.	Strengthening implementation (of services, investments, regulatory activities)	
4.	Preparation/facilitation of EC cooperation (or broader donor cooperation)	

	Quality attribute	***Assessment***
1.	**Fits the context**	
1.1.	How does the context analysis confirm that TC is the appropriate aid response?	
1.2.	Are there any critical constraints which could impede achieving the purpose of the TC supported programme? If yes, how are they addressed?	
1.3.	Have similar programmes and types of TC support been successful in the current context?	
2.	**There is clear commitment and adequate ownership from partners**	
2.1.	How have key stakeholders convincingly expressed commitment and demand for support which is commensurate to the size of the project and, for CD interventions, to the scope of change?	
2.2.	How have the partners participated in the design/ implementation of TC support, beyond formally endorsing proposals and other requirements?	
2.3.	Have inputs from partners been specified? Are they mobilized as planned indicating that ownership is strong enough to achieve and sustain the desired results?	

Quality attribute	Assessment
3. Fits the context The support is harmonized and sustainability of benefits considered	
3.1. Has the "mapping" of TC support from other donors in the sector been completed? Were the other main donors consulted on the possible upcoming TC support?	
3.2. What synergies and harmonisation options have been explored? Were they pursued with partners and other donors?	
3.3. Are any proposals for stand-alone TC support clearly justified? In this case what are the strategies for further harmonization and sustainability of benefits?	
4. Link to results and expected outcomes are clear	
4.1. How are results and/or outcomes defined/monitored at the level of actual service delivery, regulation or investments in use, beyond immediate TC deliverables?	
4.2. How are TC roles and executive roles of partners specified/fulfilled? If partners play no or a limited role, is this separately justified?	
4.3. What innovative forms of TC support have been considered? Are TC inputs balanced in size and intensity to the partner's capacity to lead, manage and absorb support?	
5. The "programme implementation arrangements" (PIA) are appropriate	
5.1. How are the project implementation arrangements designed/effectively based on the results to be achieved, considering their dependency on inputs from partner organisations?	
5.2. How does the managerial autonomy of the PIA provide adequate authority over programme resources considering the purpose of the programme?	
5.3. In which way are partners in the lead? Has a clear accountability to domestic stakeholders been introduced?	

Annex 5

Format for Mutual Performance Dialogue

This format for mutual performance dialogue is intended for use between a longer term technical assistant/consultant/expert and his/her immediate supervisor in the partner organisation for which the consultant works. Depending on the situation, it can be used every month, quarter or every 6 months.

It is not for use between EC delegation staff and TA personnel unless the latter work exclusively for the delegation.

The objective of the format is to make the consultant's contribution effective. This demands that the consultant is performing well but it also requires that the client establishes an enabling environment for the consultant to access to information, support, dialogue and joint work with staff in the organisation, to clear endorsement of workplans, draft products etc. In short, "it takes two to tango" – and this format is a means to enable both parties finding the right set-up that lead to good performance and lasting impact.

The format is not intended for assessing performance of the consultant, or the partner, for the sake of assessing performance or for the sake of backing decisions that need formal underpinning, e.g. shortening the contract of a consultant whose performance is not acceptable. In the same vein, the format is not suited for conflict resolution. It is strictly aimed for situations where cooperation is flowing more or less "normally", and where structured dialogue can solve "normal" problems and enhance performance.

The format should be adapted to suit local needs and customs.

How to use the format:

The format can be filled out jointly during a meeting which should not have other issues on the agenda. Alternatively, the two parties can each fill in their part of the format, and then meet to discuss their respective assessments and enter joint comments. Comments could also include observations that the parties disagree.

What to do with the format after the dialogue?

The format should stay with the two parties of the dialogue, and be referred to the next time the assessment is made. Copies may be distributed to higher level managers in the client organisation and to the task manager in the EC delegation. The format can be used with different focus including as a tool to identify problematic issues to be addressed. EC task manager should, however, as a minimum, request confirmation that the mutual performance dialogue has taken place.

It can be part of the financing agreement that such mutual dialogue will take place at specified intervals.

Mutual Performance Dialogue – Technical Assistance Personnel

Name of supervisor: .....

Name of adviser/consultant: .....

Period under assessment: .....

1: very much/very good
2: good/to some degree/fair
3: Not quite good enough/less than satisfactory
4: Unsatisfactory/no/poor

Issues	*Supervisor's assessment*				*Consultant's assessment*				*Joint comments*
	1	*2*	*3*	*4*	*1*	*2*	*3*	*4*	
Plans, results and efficiency									
1. A clear and agreed workplan has been followed									
2. Agreed results have been delivered on time in appropriate quality									
3. The TA has been efficient									
Preconditions for performance									
4. Necessary informtion for task accomplishment has been provided to the consultant, as well as access to informants in and outside the organisation									
5. Participating staff have been available as planned and agreed									
6. Participating staff have been supportive, engaged and have provided timely feed-back when required									
Management performance									
7. The key supervisor/ manager has provided effective overall directions for the work									
8. The key supervisor/ manager has been available on request									
9. The key supervisor/manager has supervised the work of the consultant appropriately									

Consultant performance									
10. The consultant has sought guidance and respected his/her advisory role									
11. The consultant has been adaptive and flexible									
12. The consultant has been proactive and proposed relevant ways of accomplishing the advisory tasks									
Co-operation									
13. Problems have been addressed in a constructive manner									
14. Cooperation is considered satisfactory									
15. Possible problems from earlier periods have been addressed									

Additional comments – Supervisor/Manager:

Proposals for the next period:

Issues which should be brought to the attention of others:

Additional comments – Consultant/Adviser:

Proposals for the next period:

Issues which should be brought to the attention of others:

Date:

……..…… ……..……

Supervisor Consultant

Higher level management's possible comments and countersignature:

Received: …… ……..…….....

Copies to be distributed to:

Annex 6

Short guide to EC rules and procedures – How to apply EC procedures to TC

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QUESTIONS & ANSWERS

Introduction

The purpose of the present document is to assist the services of the Commission in adequately applying the financial and procedural rules of EC and EDF legal framework (Cotonou Agreement and Instruments for EC external cooperation, EC EC/EDF Financial Regulations, etc) to implement Technical Cooperation, taking due consideration of the objectives and key principles of the Paris Declaration as reflected in EC's Backbone Strategy on Technical Cooperation.

As any other public entity, the EC disposes of a set up of rules and procedures to ensure that public funds are utilised in full respect of the principles of transparency, non discrimination, equality of treatment, best value for money and sound financial management. These rules and procedures also take into consideration the share of competences between Member States, the different EC institutions and the services of the Commission. Most of these rules are established by the EC legislator (e.g. EU Member States/Council and European Parliament) and the Commission's services must abide by them.

Within the field of EC external actions, this set of rules and procedures is translated in the Practical Guide to contract procedures for EC external actions ("PRAG"), which in addition provides instructions from the Director-General on how these rules need to be applied. With the new changes in 2007 and 2008, these rules are simpler and more flexible, introducing new possibilities for the Commission's services to use a larger array of aid delivery methods, new sources of finance and new implementing partners in line with European and international commitments of the EC (e.g. Paris Declaration, European Consensus, Code of Conduct on Division of Labour).

Useful link No 1: The PRAG can be found at the following site:
http://ec.europa.eu/europeaid/work/procedures/implementation/practical_guide/index_en.htm

The present document represents an additional effort to explain EC procedures in a friendly manner for non specialists in contractual and financial matters, who often see rules and procedures as an obstacle rather than a facility to better implement their objectives. Rules and procedures are tools at the disposal of the Commission's services. Experience shows that rules and procedures would only become an obstacle when actions have been designed without having these tools in mind. On the contrary, if all possible legal choices (which have increased in 2007 and 2008) as well as their related procedures are duly borne in mind at an early stage, this will be one of the best guarantees to ensure a smooth implementation of the action.

The present document will further develop the sections of PRAG, as well as of other instructions from the Director-General of EuropeAid, relevant to Technical Cooperation. ***Note that, as a rule, there are no exceptional or specific procedures concerning Technical Cooperation and hence this type of activity is subject to the standard rules contained in the PRAG.*** Consequently, this document does not introduce **changes to EC procedures**, its main contribution would be to re-think when and how procedural issues should be taken on board by the Commission. **Both operational and financial/contractual services of the Commission should work together from the identification and formulation phase to adequately consider (and use) the large variety of contractual and procedural tools already at their disposal and thus obtain a more efficient and effective delivery of such aid**.

To that end, this document is structured following the procedural steps in the implementation of Technical Cooperation, namely:

- the identification and formulation phase, where the programme or action including Technical Cooperation (it may be a part or all of the action) is designed by the services of the Commission in consultation with the partner country, hereinafter referred to as "beneficiary country" (this term also applies to regional entities acting as authorising officers, mainly under EDF) and other donors. The design of the programme or action, in procedural terms, will particularly focus on deciding the sources of financing (EC and other donors), who will be in charge of managing the programme or action, as well as the main procedures and legal instruments to be used. In that phase the time line of the action or programme has to be adequately assessed to ensure a timely implementation;

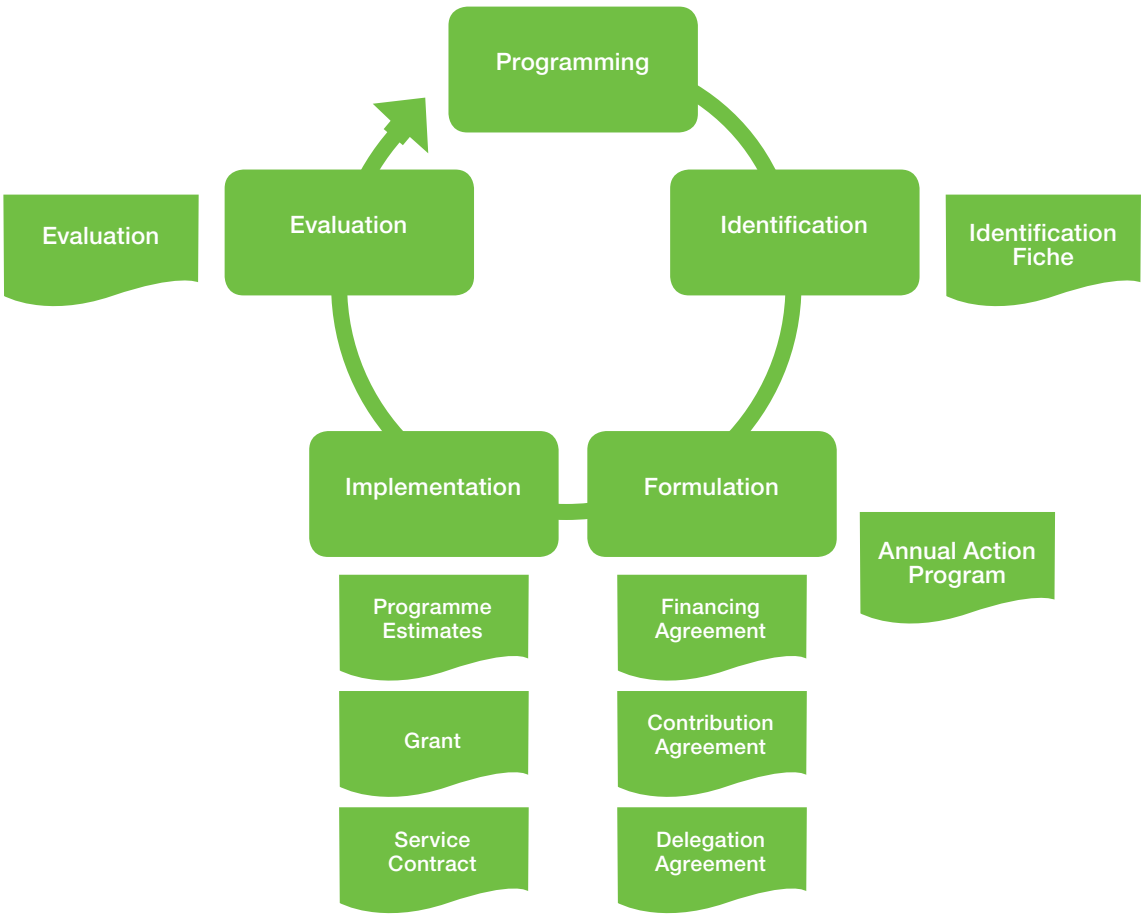
- the decision-making phase, where the Commission (College) decides on the main elements of the proposed action or programme including Technical Cooperation (***financing decision/Annual Action programme***) and the beneficiary country (or other implementing partners, such as national or international organisations) formally agree with such elements (***signature of the adequate agreements***);
- the implementation phase, where the chosen procedures are launched and the contracts are concluded by the contracting authority and executed by the contractor/grant beneficiary. In this process, as well as during the execution of the contracts, particular attention has to be paid to the involvement of the beneficiary country and the quality of the experts.

The above is completed by *Questions and Answers (Q&A), practical examples, links with useful legal documents/templates, check lists and graphics*.

The present document highlights the importance to ensure the ownership of the beneficiary country and the involvement of other donors in programmes or actions relating to Technical Cooperation, from the identification and formulation phase to the final steps of the implementation. To that end, where possible, coordination amongst donors and co-financing will be considered and the use of decentralised management with local procedures will be privileged. This will ensure amongst others the pursuit of key principles of the EC Backbone Strategy on Technical Cooperation such as demand-led approach, country-owned and managed process, working through harmonised and aligned actions, avoiding the use of parallel PIUs and promoting effective beneficiary-owned implementation arrangements. Also, the present Annex provides elements with which the Commission services may explore different and innovative options for the provision of Technical Cooperation (use of grant mode, new cases of negotiated procedures for service contracts/direct award of a grant, use of indirect centralised management).

Remember that any intervention of the EC has to fall under the scope of the relevant programming documents (strategy paper and multi-annual indicative programme).

Graphic 1: Overview of key EC documents



Chapter 1 - Identification and formulation phase: Procedural aspects to be considered

This chapter explains:

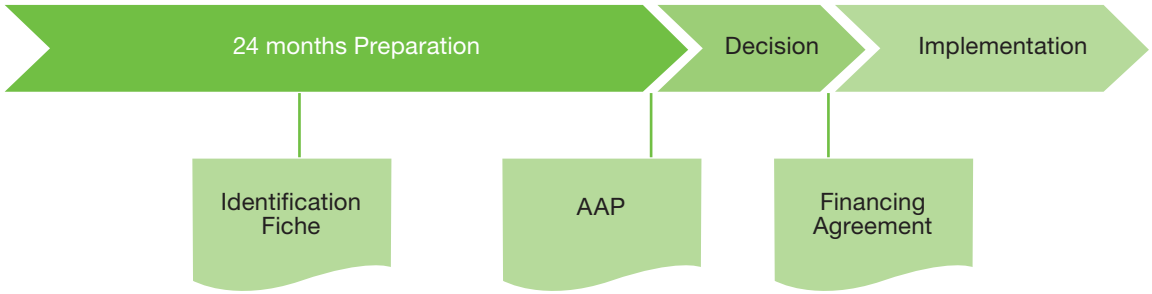
- → The link between this annex, the guidelines, the Backbone Strategy on Technical Cooperation and PIUs and the EC's commitment to the Aid Effectiveness Agenda;
- → The importance to start early in the design to consider both the project description and the management arrangement
- → To consider EC procedures that facilitate the harmonisation of TC with others donors
- → How procedures can support ownership of TC by the Partner country (= beneficiary country)
- → That several contractual options exist to mobilise TC in other forms than "traditional expatriate" TA
- → How to finance a preparatory study, such as a capacity assessment exercise

During identification and formulation, from the procedural and contractual point of view, the discussions with the beneficiary country and amongst donors on programmes or requirements of the beneficiary country with regards to Technical Cooperation will i.a. tackle the following key issues:

Box 1: Procedures: three levels of consideration

1. who would finance what (in the case of **co-financing**)? (Section 1.1)
2. who would be in charge of managing the programme or action (possibility to use **delegated cooperation**)? (Section 1.2)
3. what type of Technical Cooperation activities are being designed (this may have important implications on the choice of appropriate **procedures and contractual form**)? (Section 1.3)

Issues such as co-financing with other donors and delegated cooperation, which can help achieving the key principles of the EC Backbone Strategy, as well as the aid delivery method and related procedures (budget support[6], project approach using service contracts or grants), should be taken early into consideration during the identification and formulation phase of an action/programme. **The reflexion on the design of the action and its procedural aspects will be reflected in the identification fiche and options discussed with the QSG.**



Time-wise, it is important that the preparatory phase (identification and formulation) is initiated by the Commission's services at least two years before the action will be implemented, given the need to coordinate the action with the beneficiary country, potential co-donors and the required internal process within the Commission (approval by the QSG, adoption by the College of the financing decision/Annual Action Programme, signature of the relevant agreements, launching of the tender/grant procedures, signature of the contracts, etc). An early planning and design will also give more room for manoeuvre to the Contracting Authority to solve problems as they arise. The current legal and financial framework gives some flexibility: for instance, the financing decisions (usually in the form of Annual Action Programmes) may be adopted the year before the actual global commitment is required (See Section 2.1.1 of this Annex).

1.1 Coordination with beneficiary countries and other donors

The first step of the identification and formulation phase is, in addition to the dialogue with the beneficiary country (see in particular Chapters 2 and 3 of the present Guidelines), to systematically inform the donors about the preparation of all actions of Technical Cooperation. In this context, the possible use of joint co-financing amongst donors could be one of the key elements for cooperation and help achieving the objective of reducing parallel PIUs (See indicator 6 of the Paris Declaration in Section 5.1 of the present Guidelines).

Co-donors should not only be involved in the design of the beneficiary country's programme/action, they should also be consulted, where necessary, during the decision-making, preparation of the tender or grant award procedures and the implementation of the relevant contracts (monitoring, evaluation, etc – see section 7.1 of the Guidelines). For instance, they should systematically be consulted for the preparation of the terms of reference for a call for tenders for service contracts (see section 4.4 of the present Guidelines).

6 *Further information on this aid delivery method, which will not be discussed in the present annex but may also help to achieve the objectives of the EC Backbone Strategy, may be found at the following site* ***(Useful link N°2):***
http://ec.europa.eu/europeaid/what/economic-support/documents/guidelines_budget_support_en.pdf

In most cases, at the level of the Commission services, the process for donor coordination follows a bottom-up approach: it is usually initiated at the field level by EC Delegations, which are in contact with the concerned authorities of the beneficiary country and ***all*** the donors present in that country/sector to discuss the requirements/programme concerning Technical Cooperation designed by the beneficiary country. This would lead to negotiations and implementation arrangements between the beneficiary country and all relevant donors. Headquarters should be duly informed of these negotiations, as they would later be involved during the decision making phase (section 2 below).

As a result of these negotiations, beneficiary countries and co-donors agree on how to implement the activities (usually in the form of a memorandum of understanding or "MoU") to establish the principles governing the relation amongst them. These arrangements should normally contain elements such as provisions on governance and description/plan of the actions to be undertaken and their related budget as well as how they are approved and modified; in these discussions the type of contract to be used could be reflected (see sub-section 2.1.3 of this Annex). For further details, see Section 7.3 of the PRAG and Chapter 5 of the present Guidelines. Such non-binding arrangements must comply with the applicable EC financial rules and will be consistent with other documents that need to be signed and/or adopted by the Commission (see below).

1.2 Choice of the entity managing EC funds: management mode (method of implementation)

For the Commission, the choice under point 2) of box 1 above (who manages or implements the programme/action) determines the procedural and contractual ways in which the Commission will operate:

1. the management mode, which is to be established in the financing decision/ Annual Action Programme ("AAP"),
2. the type of agreement to be signed,
3. the procedures to be used for implementing the programme/action.

The **management mode** (referred to as method of implementation in the Financial Regulations) establishes the entity (Commission, beneficiary country, national body of a Member State or a third country, international organisation) who will act as Contracting Authority (e.g. launching call for tenders/proposals and concluding service/grant contracts, financial management/payments, etc.). The management mode should be one of the elements to be discussed during the formulation phase.

➔ When the Commission manages the programme or action directly (headquarters or delegations), the management mode is **direct centralised management**. The rules of the Commission for implementing EC funds are followed (i.e. PRAG).

➔ The Commission may decide to delegate to an entity the management of tasks relating to the expenditure of EC funds (**delegated cooperation**), which needs to be an objective and transparent decision. The delegatee entity would then become responsible for launching calls and concluding contracts partly or wholly financed by the EC. It also may proceed to do payments to third parties on behalf of the EC. The procedures used by the delegatee may be different from those of the EC. As a rule, the use of these management modes and the use of procedures and systems different from those of the EC require an ***ex ante*** assessment by the Commission of these procedures and systems (or "pillars"), in order to ensure that these comply with international standards and thus are close to those applied by the Commission.

Useful link No 3: To proceed with this assessment, the concerned services of the Commission have at their disposal the terms of reference, available at: http://ec.europa.eu/europeaid/work/framework-contract/audit2006/tor_for_compliance_assessments_en.htm

This exercise can be performed directly by the Commission or through a service contract concluded with an audit firm (already the case for the review of the 4 and 6 pillars for international organisations and national bodies performed by or under the coordination of AIDCO/G2).

The possible options for delegated cooperation (see Chapter 7 of the PRAG) are the following:

Box 2: Overview of Delegated Cooperation

Entity	Management mode	Legal instruments	Procedures
i. **international organisation**	Joint management	Contribution agreement	Procedures of the international organisation
ii. **national (public or private) body of a donor country**	Indirect centralised management	Delegation agreement	Choice between the EC rules or those of the delegated body
iii. **beneficiary country**	Decentralised management	Financing agreement	EC rules. Possibility to use rules of beneficiary country or other donor

In all cases above, in addition to the EC, other co-donors may directly provide their contributions to the entity indicated above, who would thus implement/manage a jointly co-financed action. The Commission may also receive funds from other donors to implement Technical Cooperation (for more details see section 7.4 of the PRAG).

The choice of the management mode is approved by the Commission (College) through the adoption of the relevant financing decision/Annual Action Programme.

In order to ensure compliance with the principles of ownership by the beneficiary country and accountability vis-à-vis the co-donors, the preferred management mode for Technical Cooperation actions should be decentralised management, which will also help achieving the objective of reducing parallel PIUs (Indicator 6 of the Paris Declaration).

The Commission could however consider taking advantage of the expertise in *managing* Technical Cooperation actions from a national body of a donor (it could be from the North or South, even a network of such entities)[7] or an international organisation; in that case indirect centralised or joint management could be envisaged instead.

7 *Note that the expertise of the national body refers to managing a programme (i.e. organising how the programme is to be implemented, launching tenders and signing contracts, financing projects) and not to implementing a service contract itself. If the expertise of a national body is in-house and it is implemented by such body under direct centralised or decentralised management, a service or grant contract with it should be considered instead of indirect centralised management, preferably under decentralised management (see sub-section 2.1.2 below). Indirect centralised management cannot be regarded as an alternative to conclude a negotiated procedure/direct award under centralised/decentralised management.*

1.2.1 Decentralised Management

In case decentralised management is retained, this means in practise that Technical Cooperation is managed/ implemented by the beneficiary country itself. The degree of delegation to a beneficiary country may vary:

- In most cases, EuropeAid currently applies **partial decentralisation**, by which the procedures to be used by the beneficiary country are those of the EC (i.e. those contained in the applicable EC financial rules as reflected in the PRAG) and the financial management of the EC funds remains within the Commission (i.e. payments to third parties under the contracts concluded by the beneficiary country, except, where applicable, under the thresholds provided for in the Practical Guide to procedures for programme-estimates[8]). Whenever this partial decentralisation is sought, there is no need for an ***ex ante*** assessment of the procedures.
- However, notably in the case of joint co-financing, and pursuant to the objectives of the Paris Declaration and the Guiding principles mentioned above, **substantial decentralisation** should be sought where possible. Substantial decentralisation means that the beneficiary country may be authorised to i) use its own procedures and/or ii) manage payments to its contractors/grant beneficiaries beyond the limits of the programme-estimates (i.e. substantial funds are transferred to the beneficiary country, which will manage them according to their rules). Substantial decentralised management requires completion of the ex ante assessment of the "5 pillars".

In cases of co-financing, the co-donors may be interested in only one donor (usually the lead donor) supervising the execution of co-financed funds by the beneficiary country and, where applicable, carry out the payments to third parties. These tasks of supervision and payments that the Commission usually keeps "centralised" in cases of decentralised management are known as **"residual tasks"**. To that end, the EC financial rules foresee the possibility for the Commission to delegate residual tasks to national bodies of donors under indirect centralised management, who will proceed to supervising the co-financed action (and, where applicable pay contractors/grant beneficiaries) on behalf of the EC. To delegate such tasks, the Commission should conclude a Delegation agreement.[9]

1.2.2 Other management modes

- Under **indirect centralised management**, the Commission entrusts a national body the management of EC funds (e.g. launching call for tenders/proposals and concluding contracts with third parties); the Commission does not aim at financing or paying for activities implemented *in-house* by such national body. In the latter case, a service or grant contract should be used instead. It is not excluded that, under indirect centralised management, *a (non substantial) part of the action* be directly implemented in house by this body, but this cannot represent the main purpose (or bulk) of the action. On the contrary, under a grant, the bulk of the activities should be implemented by the grant beneficiary or its partners, and only a limited part of the action could be sub-contracted. Also, indirect centralised management should be used, save in exceptional cases, for important (mostly in terms of size) co-financed projects. As a rule, the use of indirect centralised management with a national body of a donor country is not an alternative to a service or grant contract.
- When the management of the project entailing Technical Cooperation is delegated to an international organisation, then **joint management** should be the management mode.

The agreements to implement these two management modes are always signed by the Commission.

Further information on the principles and rules applicable to co-financing and delegated cooperation, as well as the contractual models to be used, is contained in Chapter 7 of the PRAG. Complementary information in particular Instruction Note on "Guidelines on joint co-financing with Member States and other bilateral donors" (No 24585 of 4.12.2008).

8 *It should be underlined that the Practical guide to procedures for programme estimates concerns the financial management of decentralised actions (share of tasks between the different actions) but in no event relates to the tender or grant procedures to be applied, which are those defined by the EC financial rules (and as such reflected in the PRAG) or, those of the beneficiary country or another donor, as agreed.*
See useful link http://ec.europa.eu/europeaid/work/procedures/implementation/work_programmes/index_en.htm

9 *Cf. Articles 53c(1) and 54(2)(c) FR and 22(1) FR 10th EDF.*

Useful link No 4: Instruction Note on "Guidelines on joint co-financing with Member States and other bilateral donors", may be found on the following site: http://ec.europa.eu/europeaid/work/procedures/implementation/international_organisations/documents/guidance_annex_d24585.pdf

Q&A 1: Do you need the five pillars assessment when programme estimates are used but the thresholds for payments delegated to beneficiary country are increased?

We are in a case of partial decentralised management in which programme estimates apply and limits exist for the payments to be carried out by the beneficiary country (EC procedures apply). After discussions with the beneficiary country, it appears that they would like to have a more important responsibility concerning the payments to be executed. For that reason, the thresholds for programme estimates will be substantially increased so the bulk of the payments (e.g. to the contractor of a service contract, referred to as "Consultant") will be made by the beneficiary country itself. Do the Commission's services need to do the assessment of the pillars?

The financing decision included partial decentralisation and application of the standard thresholds for payments to be executed by the beneficiary country (under the regime of programme estimates), as in this case the thresholds will be increased, the level of decentralisation has to be considered as substantial and the relevant assessment of the pillars need to be carried out (and the initial financing decision needs to be modified).

Q&A 2: Can the Commission's services take into consideration documents relating to the assessment of the beneficiary country's system made by other institutions (World Bank), or those carried out by the Commission for budget support to assess if decentralised management is possible?

YES, but it is not an automatic recognition.

It is not necessary to reinvent the wheel and the applicable legislation does not specify on what kind of documents the assurance of the responsible authorising officer should be based upon. When assessments of a country system have already been carried out clearly by another donor (or the Commission for the implementation of other aid delivery methods) and such assessments confirm that all or part of the conditions contained in our Financial Regulations are met, the responsible authorising officer, after analysing such information, could obtain total or partial reassurance of the compliance of one or more of the applicable conditions.

Note however that it is not a blind or automatic acceptance; the concerned services/authorising officer must:

- analyse the said documents, which come from a reliable source;
- confirm that the assessment contained in these documents: i) cover the same procedures/systems used by the entity to which tasks will be delegated by the Commission ii) totally or partially address one or more conditions for decentralised management foreseen in the applicable articles of the Financial Regulation and iii) provide the required level of evidence of compliance with one or more of these conditions.
- include a written statement in the file indicating that the above has been effectively carried out as well as explaining the evidence obtained from those documents.

Where the above documents/assessments fail to comply with the above, these could only be used as a complement to the specific assessment required by the Financial Regulation for decentralisation

Q&A 3: Can a beneficiary country delegate EC tasks to an international organisation?

NO

During the dialogue with the beneficiary country, it was decided that a programme will be managed by that country under decentralised management through the signature of a financing agreement. Within this programme, the idea was to delegate an action on Technical Cooperation to an international organisation under joint management; meaning that the organisation would be in charge of contracting third parties and organising the whole implementation of the programme. Could the contribution agreement with that international organisation be signed by the beneficiary country and hence EC funds provided by that country to the international organisation?

The delegation of tasks under joint management (or under indirect centralised management) can only be agreed by the Commission (College); hence the signature of a contribution agreement under joint management (or delegation agreement under indirect centralised management) can only be signed by the Commission. The beneficiary country could sign a contribution agreement only when the agreement entails the award of a grant (i.e. no delegation of tasks under joint management), for which the rules on grants are applicable. This means in practise that the beneficiary country should launch a call for proposals to award grants, unless a direct award can be justified on the basis of article 168 of the Implementing Rules. It is reminded that, under these rules, the fact that the beneficiary ("grantee") is an international organisation does not per se justify a direct award as the conditions of article 168 must be respected.

Q&A 4: Delegating residual tasks or the entire management of the action to a national body?

During the discussions of a programme on Technical Cooperation with the beneficiary country and other donors, it was agreed that only a national body of one of the donors would monitor the implementation made by the beneficiary country on behalf of other donors. The chosen national body declared that it would only be responsible for such monitoring but refused to be responsible for the implementation of the programme as such, which should remain the responsibility of the beneficiary country. All donors tended to agree. What management mode should the Commission use?

When a programme/action is delegated to a national body under indirect centralised management, the national body should be responsible for the entirety of the dele-gated programme/action, even if some parts of the programme/actions are implemented by a partner (for in-stance, the beneficiary country itself). In case no such responsibility is accepted by the national body in question, the services of the Commission could consider directly delegating the action/programme to the beneficiary country under decentralised management, after satisfactory result of the prior assessment, through the signature of a financing agreement, so the beneficiary country is directly accountable vis-à-vis the Commission. Then, the Commission could delegate the residual task relating to monitoring/control to the national body, as all other donors. In such case, the national body would only be responsible for these delegated tasks and not for the entire implementation of the action.

Q&A 5: Can you just accept the proposal of a national body to use indirect centralised management?

NO!

A national body from one EU Member State has approached a Delegation and suggested that the Commission co-finances an action relating to Technical Cooperation. The beneficiary country does not oppose this. Can the Delegation just simply go ahead accepting this proposal, indicating indirect centralised management as management mode to the College (leading to the signature of a delegation agreement)?

The sector/field of intervention should have been covered by the programming documents of the Commission. Furthermore, the choice of the delegatee body should be also consulted with other donors present in the field, in particular EU Member States, to discuss this possibility and eventually invite them to participate. It may be the case that other national bodies from different Member States may also be active in that area of Technical Cooperation in the country and would also be interested in coordinating these activities with the Commission or being co-financed by the Commission. The choice of the Commission on the national body must be duly justified on objective and transparent grounds and all interested parties from EU Member States active in that field/country must be heard to avoid discrimination amongst EU Member States. In its choice, following a positive assessment of the six pillars, the Commission must also be able to substantiate that considerations on the economic aspects as well as effectiveness and efficiency, have been taken into consideration. The choice of a national body is in principle reflected in the financing decision/Annual Action Programme. This document is submitted to EU Member States through the relevant Committee (see Section 2.1.1 of this Annex), who may request clarification/justification of the choice of the Commission. The Commission shall also inform annually the legislative authority of the use of this management mode and the bodies selected.

1.3 Technical and procedural considerations to be taken into account during the identification and formulation phases

It is of the utmost importance that the beneficiary country and the Commission gain a clear idea during the discussions on the design of the Technical Cooperation, on what sort of legal and procedural instruments should be used by the Contracting Authority (usually the beneficiary country itself, but also the Commission, a national body of a donor or an international organisation), and in particular which aid delivery method and/or forms and procedures of contracting should be used to achieve the best results.

While under decentralised management, it is the beneficiary country who leads the process, under other management modes (particularly direct centralised management), the beneficiary country needs to be involved in the design of the requirements (e.g. drafting of the terms of reference for a service contract or guidelines to grant applicants– see Section 3.2 of this Annex).

1.3.1 Preparatory activities and preliminary considerations

During the identification and formulation phase, it may often be necessary to carry out studies (a type of service contract) or other preparatory activities which may be funded by the Commission. Funding could be provided through an EC-funded programme which allows for such type of activity to take place e.g. a technical cooperation facility (TCF under EDF) which is often put in place at country and/or regional level to allow funding of future studies (the studies do not necessarily have to be identified already when the programme is financed). Another possibility could be existing actions or programmes in the envisaged sector (such as: Support to the health sector in country X etc.), where the possibility of funding studies is envisaged. Finally, there are also primary commitments which may have been decided under direct centralised management and which are managed centrally by EuropeAid. These may provide a useful source and should be investigated with the relevant services at EuropeAid. Have in mind also that the financing of the preparatory activities by the beneficiary country or other donors could be an alternative option to investigate, that complies with TC reform principles.

Where the Technical Cooperation is to be decentralised, the Commission and the beneficiary country (and, where applicable, other donors) may consider whether, instead of ***outsourcing*** this cooperation through service and grant contracts, the beneficiary country could implement the action itself, through the relevant programme estimate (direct or indirect decentralised operations). Also, if the beneficiary country may have the capacity to do so, other methods of implementation/aid delivery methods could be considered (sector budget support).

Practical case 1: Technical cooperation implemented by the beneficiary itself

A project in country X aimed to develop the training capacities of a university through several extension centres located in different islands. The head of the adult learning department was responsible for the overall project implementation and the university recently created a planning department, responsible for approving new training programmes according to the demands. The partners were concerned about avoiding double structures and about ensuring the integration of the project management team (the PIU) inside the existing institutions. Their choice was to take advantage of the existing adult learning department to centralise the overall direction of the project, together with the government and the EC. On the other side, the university's planning department was responsible, as the project management team, for coordinating grant procedures, service contracts with external consultants, integrating the business community within the project and reporting to the head of the project. This structure allowed to ensure the ownership to the university and to avoid the creation of new offices outside the existing university departments.

1.3.2 Design of the Technical Cooperation as a service

Technical Cooperation is usually designed as a **service** to be provided by a contractor, referred to hereinafter as "Consultant" (hence, a service contract would be concluded by the Contracting Authority – see Section 3 of the PRAG). The Contracting Authority produces detailed terms of reference indicating in detail the services it requires; the tenders respond with an offer. The Contracting Authority pays in full the price of the service provided by the contractor (carried out by a team of experts) and acquires the results of it.

Q&A 6: Should I use a global price or a fee-based service contract?

Section 3.1 of the PRAG gives the definition for both types of contracts.

1) Global price is a lump-sum contract which is typically used for example for studies and design. The specificity of such contracts is the character of the output (usually clearly defined deliverables like a report or drawings) and that from the Contracting Authority's point of view, it is not really important with what means and resources the Consultant reaches the end product (i.e. it does not matter if a given expert actually works 10 days or 15 days, as long as the deliverables are provided in conformity with the terms of reference). Payments are based on the approval of these deliverables.

Note that it is in principle not possible to formally (or informally) add any additional breakdown to a global price contract, e.g minimum input of experts or breakdown of costs (unless, e.g where some deliverables are optional and therefore would require a breakdown of price per deliverable). Note that any modification of the template would require prior approval from the relevant services of the Commission where EC procedures are followed. Since Framework contracts are service contracts, global price can be used, however the inputs need to be estimated, notably the category and number of working days; the offer gives also a detailed breakdown.

Ex: Global price Service contract in country X to design a road (ex: geological studies) or a study about the economic an social impact anti-personnel mines (ex: arrange seminars, draft a report).

2) Fee based contracts are mainly used where the knowledge transfer and support for the project implementation are the key elements (transfer of knowledge in the form of advice, to manage or supervise a project, coaching etc.) and it is therefore of importance to get as much input from the experts as possible. Payments are made on the basis of the number of days worked.

Ex: Fee based contract in country X: Technical assistance. Technical advice for planning, organization and supervision of the activities of the program. Contribute with administrative, preparatory and complementary tasks.

Deciding which of the two types of contracts is more appropriate depends on the specific case and not only whether it is a study or an advisory service.

Box 3: Fee based or Global price contracts?

Global price contracts	*Fee-based contracts*
Pros	
Simplifies the management of the contract (for both Contracting Authority and Consultant) as it is not necessary to record or check input or exact costs (no expenditure verification). No addenda or increase of costs if the estimated inputs change, e.g. increase of man/days has no impact in the contracted price and hence the increased costs are borne by the Consultant.	Contracting Authority maintains control of exact input and costs incurred. Possible modifications can be more easily assessed since there is a budget breakdown.
Cons	
Less control of exact input or exact costs (fees and incidental expenditure such as missions). Difficult to make amendments to the contract (e.g. additional services). If deliverables are not sufficiently detailed in the ToR, possible misunderstandings and difference in expectations between contracting parties.	Where deliverables are involved, may be less effective as Consultant tends to be more focused on the input of resources (requests for using extra days) than the quality of the deliverable. More administrative burden (addendum) and possibly more costs to be borne by the Commission, when the inputs need to be changed even when the outputs are not modified (changes for travels or working days/number of persons).

1.3.3 Design of the Technical Cooperation as financial support to a third party (grants)

Alternatives to service contracts could be sought to achieve similar goals, such as **providing financial support to actions implemented by third parties** (**grants)**. In that case, the legal instrument to be signed by the Contracting Authority would be a grant contract (or contribution agreement with an international organisation – See Section 6.9 of the PRAG). The Contracting Authority expresses its wish to provide financial support to actions which pursue an EC policy objective. The grant applicant responds with a proposed action which it (usually) co-finances. There are some exceptions to the co-financing rule (see section 6.2.9 of the PRAG) save where forbidden by the basic act (i.e. the regulation which finances the project). One of the exceptions is where it is in the interest of the Community to be a sole donor to an action, and in particular to ensure visibility of a Community action. Note that the grounds for such cases must be provided already in the financing decision of the Commission[10]. The project is elaborated by the applicant and the result of this action remains its property. A modality of grants which currently exists under the ENPI is twinning actions. For instance, the Contracting Authority could consider co-financing an action submitted by a third party (e.g. a national public body from a Member State or an NGO) to implement a programme of exchange of officials (see Section 4.3 of the present Guidelines). Note that the templates for grants (from Guidelines to contract model, including the evaluation grid) may need to be adapted to the requirements of the specific action given the elements linked to Technical Cooperation.

10 *Article 169 of the Financial Regulation applicable to the general budget of the EC and article 253 of its implementing rules (apply by analogy to EDF)*

Practical case 2: Case in which a grant should not have been used

Example of a case where the action should have been contracted as a service contract - or, possibly, as an action to be implemented under a different management mode if the conditions were met (i.e. indirect centralised management):

In response to a call for proposals, a proposal was submitted to the EC services in order to carry out an action in the field of food safety. The grant applicant was an inter-professional association working at international level in the agriculture field. A grant was awarded.

Afterwards, a close analysis of this contract revealed that the action financed should have been contracted differently (e.g. via a service contract).

The elements for such a conclusion were based on the following:

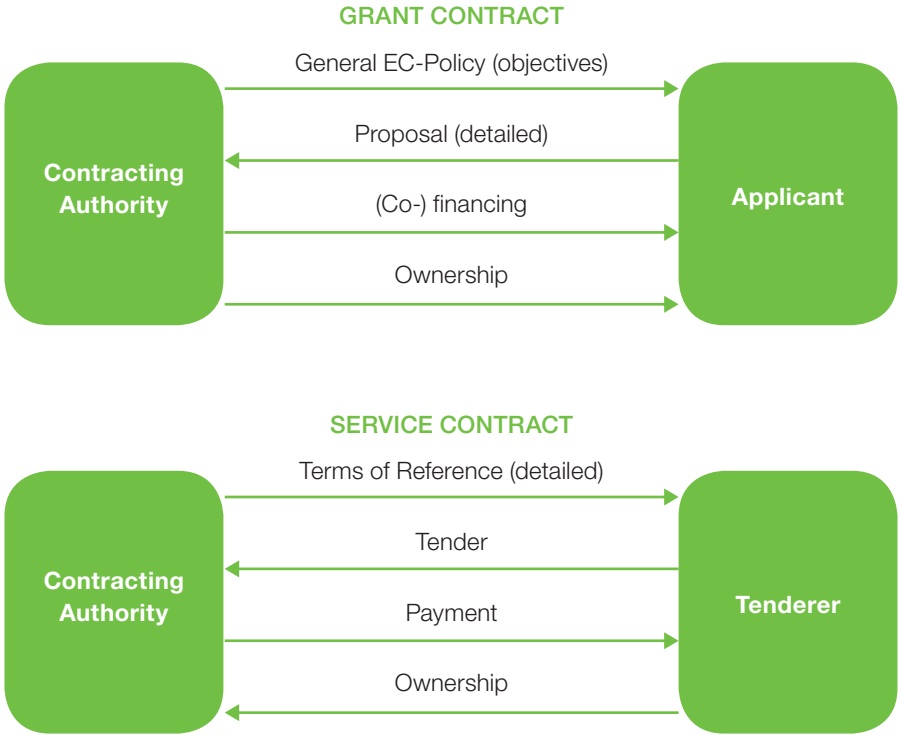
- ➔ the grant contract foresaw that the grant beneficiary would act as an intermediary only;
- ➔ the action was financed 100% by EC funds and no co-financing was foreseen by the grant beneficiary;
- ➔ although a call for proposal had been published, the grant beneficiary proposed was the only organisation which had replied to the call (it is thus likely that the guidelines were very precise, closer to a terms of reference, limiting the possibility for applicants to propose "their" solution to achieve the objectives sought by the EC);
- ➔ the guidelines of the call for proposal asked the candidates to submit the CVs of the experts working in the proposed action and the appreciation of these CVs was part of the evaluation of the grant proposal.

The choice between grant/service is of key importance, as the philosophy and legal consequences of the choice varies from a service contract to a grant. For instance:

Under a **service contract**, the Contracting Authority has ***full*** control of the design and implementation of the contract (from the specification phase, where the Contracting Authority defines in detail what it is required and hence ***proposes to tenderers what needs to be done***, to the ownership of the result, which it acquires against the payment of a price).

Under a **grant contract**, the Contracting Authority sets the objectives it wants to attain and, on that basis, chooses to (co-)finance the project ***proposed by the applicant***. The grant beneficiary remains the owner of the project and its results.

In light of the elements of each of these categories of contract, this choice of the category of contract has an impact on the overall design of the action and hence discussions on the contractual aspects of this action should be taken into consideration from an early stage. It is not possible, at the moment of launching a call, to simply "label" an action having the characteristic of a service as a grant in order to apply the rules and procedures for grants, or vice-versa.



Practical case 3: Twinning arrangements

In the framework of ENPI, twinning projects bring together public sector expertise from EU Member States and beneficiary countries with the aim of enhancing co-operative activities. They must yield concrete operational results for the beneficiary country under the terms of the Association Agreement between that country and the EU. Twinning projects are chosen and contracted following a call for proposal in which only EU Member States (or MS bodies) may participate.

Practical examples can be found on EuropeAid's external website; call for proposals for the Mediterranean region in which for most countries a decentralised approach is followed. One example is EuropeAid/126668/C/ACT/EG "Twinning Project for the National Telecommunication Regulatory Authority in Egypt".

Useful link No 5: Useful information, procedures and templates can be found in the Twinning Manual (version 2007, to be updated) on the following link:
http://ec.europa.eu/europeaid/where/neighbourhood/overview/twinning_en.htm

Q&A 7: Working with public administrations (part 1)

Due to the requirements of the beneficiary country and/or the action, it is sometimes objectively useful or even necessary to work with a public administration of an EU Member State (for instance, need to exchange public officials, where the activities should be carried out by a national police force, a national judicial authority or a national Court of Auditors from one or more Member States). What options does the Commission have in legal and procedural terms?

1) What would be the role of this public administration?

- ➔ Organise the action (launching call for tenders/proposals so third parties would actually provide the Technical Cooperation) or
- ➔ Implement directly on its own the majority of the action.

In the first case, the Commission would delegate its tasks – this means that indirect centralised management would be used. Indirect centralised management should be in general only used in case of co-financing, for the management of big actions or programmes.

In the second case, it appears that the most adequate legal instrument would be the conclusion of a grant or service contract with that public administration. Such contract could be signed by the Commission (centralised management) or by the beneficiary country (decentralised management).

2) Service or grant?

As indicated under section 1.3, service and grant contracts have different characteristics which need to be weighted when designing the action as a grant or a service and thereby the most appropriate type of contract. One should notably find out whether the type of public administration envisaged can provide services, as some public administrations or institutions cannot, by law, participate in tenders and/or conclude procurement contracts. In that case, the possibility to work with such entities under a service contract would be discarded from the outset. If that is the case, the action should be designed as a grant (under direct centralised –signature of grant contract by the Commission- or decentralised management – signature by the beneficiary country-).

For whatever reasons a grant contract is chosen, the principles governing grants must be followed (see section 6.2 of the PRAG), such as the co-financing requirement. In specific cases, some of these principles may be waived: for instance, an action implemented under a financing agreement may be financed in full only if this proves essential for it to be carried out; in such case the authorising officer must provide justification in the award decision relating to the action in question.

It is also possible to waive the co-financing requirement where it is in the interest of the Community to be the sole donor of an action (visibility reasons). If this is the case, grounds must be provided already in the financing decision.

Note that twinning arrangements are grants and thus the rules on grants are applicable, with the special considerations mentioned in the aforementioned Twinning Manual.

In order to respect the non-profit rule that applies in case of grants, special attention must be paid to salary costs of personnel of public administrations of EU Member States (or other donor countries). Following the Implementing Rules of the Financial Regulation[11], salary costs of personnel of national administrations may be considered as eligible costs to the extent that they relate to the cost of activities which the relevant public authority would not carry out if it did not undertake the project concerned, since these costs are already funded by the budget of the Member State (or regional or local authorities) in the framework of their normal activities.

Whatever contract is chosen, following a risk assessment made by the responsible authorising officer, public administrations may be exempted from certain of the usual requirements, notably financial guarantees. Note that, in most cases, the templates included in the PRAG already include explicitly these waivers for public bodies.

11 *Article 172a §2 (e) of the Implementing Rules on EC Financial Regulation*

Q&A 7: Working with public administrations (part 2)

3) What procedures may be used?

The selection of an entity under indirect centralised management does not necessarily require a call; but, as any other management mode, may represent a political choice from the Commission (College) requiring due justification. Note that EC law is quite demanding with regards to the choice of delegatee bodies: for instance, this decision should be objective and justified and would require a previous dialogue with all EU Member States active in the region/area and in the sector. This could be done, for instance, through a meeting (reflected in subsequent minutes) or an informal call for interest. This should be reflected in the financing decision/AAP (see section 1.2 of this Annex).

In the other two cases (grant or service contract under centralised or decentralised management), the principle would be a call for tenders or proposals, where the terms of reference/guidelines would establish the required scope and describing in objective terms the requirements of the potential tenderers/applicants.

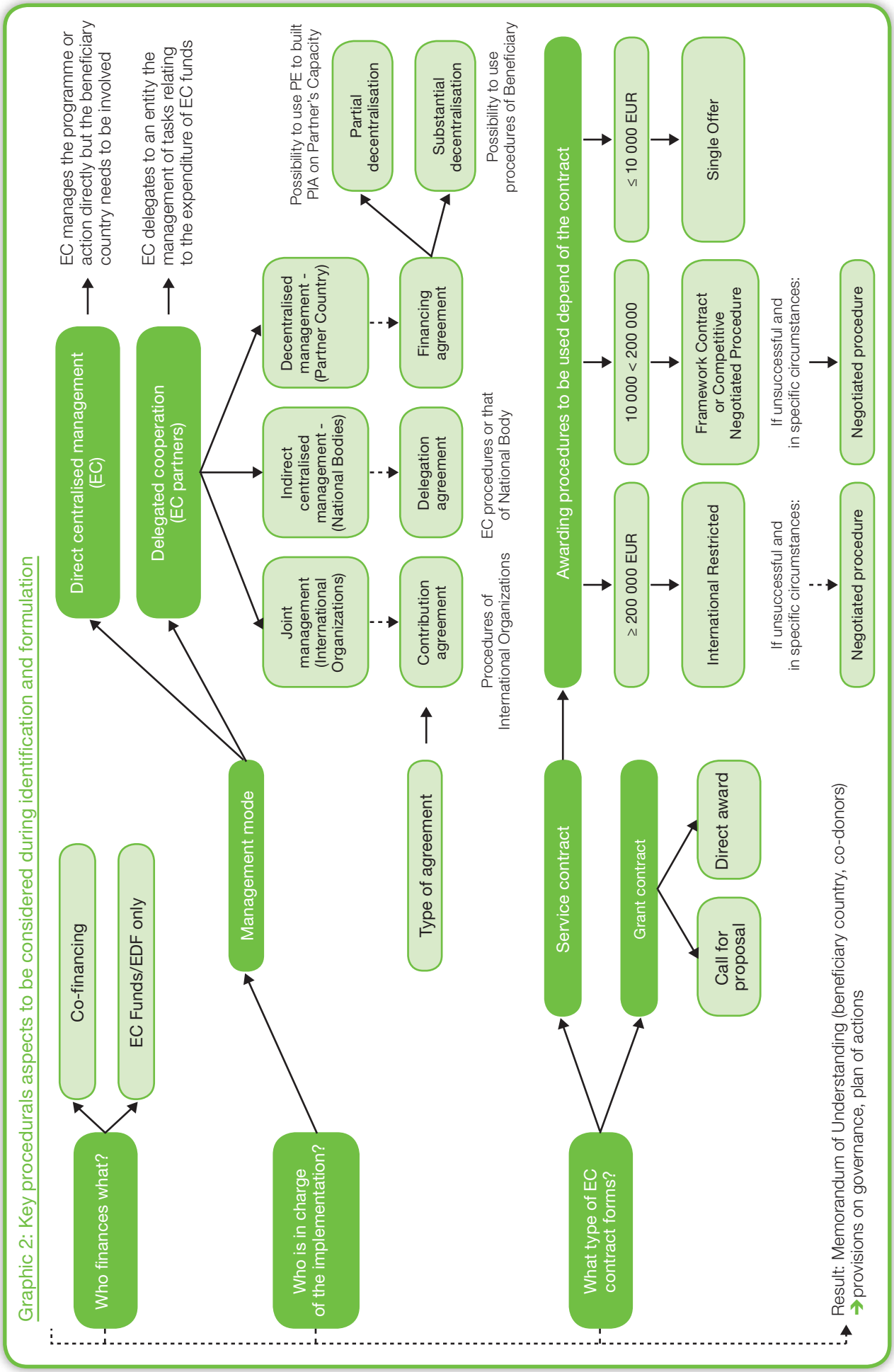
However, if the case of Technical Cooperation to be implemented by a public administration of an EU Member State, falls under the exceptional circumstances provided for in articles 168 and 242 of the Implementing Rules, a negotiated procedure or the direct award of a grant may be used subject to prior approval by the responsible authority (see Section 3.2 of this Annex).

Box 4: The different roles that a national body could have

	Type of agreement		
	Service contract	***Grant contract***	***Delegation agreement***
Function	Contractor	Beneficiary of a grant	Contracting authority
Main tasks	Implementing activities	Implementing activities	Contracting, supervising and managing contracts (including payments)
Payment	Receive payment for services rendered	Receive a grant for implemented activities	Transfer of EC funds (Manage and execute the payment to third parties).
Effect on TC	Facilitate peer to peer	Facilitate peer to peer	Better harmonisation of TC

checklist 1: what does the commission need to do during the identification and formulation phase?

N°	Question	Result	Comments
1	Has the different possibilities offered by the choice of the management mode and the contractual form (service or grants) to design the most adequate programme arrangement implementation been explored with the beneficiary country and other donors.		
2	Has a dialogue between the EC Delegation (and eventually headquarters), beneficiary country and all donors involved in the sector/country where Technical Cooperation need to be implemented taken place, in accordance with the principles contained in the present Guidelines? Have we addressed the required topics with the other donors and the beneficiary country? Has headquarters been informed in due time? Would the negotiations lead to the signature of a MoU, complying with EC rules and policies, at a later stage?		
3	Which is the management mode chosen (any other method than decentralised management needs to be duly justified)? In the case of delegated cooperation, what is the entity (beneficiary country, international organisation, national body of a donor country) chosen to manage the (co-financed) Technical Cooperation? On what objective and transparent grounds has this body been chosen?		
4	Has the required ex-ante assessment of the procedures to be used by the chosen entity been carried out? (If not, the necessary actions need to be taken for this assessment before adoption of the financing decision/Annual Action Programme).		
5	In case of decentralised management, is the degree of decentralisation decided in accordance with the result of the ex-ante assessment? Is it possible for the beneficiary country to use its own procedures? Does the Commission need to delegate to a co-donor (a national body compliant with the criteria for indirect centralised management) the residual tasks?		
6	In case of indirect centralised management, can the action be implemented through a service contract or a grant (in such case, this management mode should not be used)? Has the choice of the delegatee body been objective, transparent and respectful of the principles of economy, efficiency and effectiveness, and without discriminating between EU Member States? Have all parties involved been consulted, including other donors active in the field/sector and the beneficiary country? Is the Commission in a position to justify the choice in front of all other EU Member States?		


Graphic 2: Key procedurals aspects to be considered during identification and formulation
Who finances what?
Co-financing
EC Funds/EDF only
Who is in charge of the implementation?
Management mode
Direct centralised management (EC)
EC manages the programme or action directly but the beneficiary country needs to be involved
Delegated cooperation (EC partners)
EC delegates to an entity the management of tasks relating to the expenditure of EC funds
Joint management (International Organizations)
Contribution agreement
Procedures of International Organizations
Indirect centralised management - (National Bodies)
Delegation agreement
EC procedures or that of National Body
Decentralised management - (Partner Country)
Financing agreement
Possibility to use procedures of Beneficiary
Possibility to use PE to built PIA on Partner's Capacity
Partial decentralisation
Substantial decentralisation
Type of agreement
What type of EC contract forms?
Service contract
Grant contract
Call for proposal
Direct award
Awarding procedures to be used depend of the contract
≥ 200 000 EUR
International Restricted
If unsuccessful and in specific circumstances:
Negotiated procedure
10 000 < 200 000
Framework Contract or Competitive Negotiated Procedure
If unsuccessful and in specific circumstances:
Negotiated procedure
≤ 10 000 EUR
Single Offer
Result: Memorandum of Understanding (beneficiary country, co-donors)
provisions on governance, plan of actions

Chapter 2 -

Decision-making phase: Adoption of the financing decision and conclusion of financing – and other agreements

This chapter explains:

- → The importance to well define the time line for the preparation, decision and implementation of the action
- → What are the different steps of the decision process and what information is needed for the approval of the Annual Action Programme
- → Why to make a careful assessment of the partner's managing capacity;
- → What must be fixed and what is flexible in the Financing Agreement in regard to TC support

Any financial and legal commitment from EC budget or EDF made by the responsible authorising officer must be preceded by a financing decision/AAP adopted by the Commission (College), which defines the essential elements of the action(s) to be implemented in a given country or area. In most cases, this decision is followed by an agreement with the beneficiary country setting up the main legal, financial and operational elements of the action to be implemented. There are no special or particular rules on decision-making with respect to Technical Cooperation.

Useful link No 6: The models of financing decision/AAP and financing agreement may be found at the following site:
http://www.cc.cec/dgintranet/europeaid/contracts_finances/fin_and_cont_rules/financing_decisions_and_agreements/index_en.htm

2.1 Financing decision/Annual Action Programme (AAP)

2.1.1 Timeline and principles

A timely start-up is particularly important for Technical Cooperation. Hence, preparation and anticipation is an essential element of a successful implementation of Technical Cooperation.

The procedure for the approval of the AAP generally takes at least 4 to 6 months (QSG, Inter Service Consultation, commitment and written procedure), plus the time required to sign the relevant agreement(s) (e.g. signature of a financing agreement varies depending on the beneficiary country) and to have the implementation contracts signed (a call may last from 6 to 10 months or more). It is thus crucial to initiate the process as soon as possible to ensure a timely start-up of the action.

With regards to actions financed by the EC budget, pursuant to the instructions of DG BUDG, the procedure of approval of financing decision/AAP could be launched and adopted by the College before the budgetary year in which the project is to be initiated, but not earlier than the approval of the preliminary draft budget (usually around spring/early summer) – nevertheless, the global budgetary commitment can only be physically registered in CRIS during the year N (i.e. the year of the concerned budget). This means that the AAP for 2010 could be adopted e.g. in September 2009. The related global commitments, however, would only be registered at the beginning of 2010.

Other issues to be taken into consideration:

- ➔ Where, for one of the actions in the AAP, the Commission will receive assigned revenues from other donors, the AAP will contain a clause empowering the Director-General to sign the transfer agreement on behalf of the Commission – already foreseen in the existing template of AAP.
- ➔ The minimal content of the financing decision/AAP is governed by EC financial rules and applicable basic act and is reflected in the existing templates for AAPs (cf. article 90 of the Implementing Rules of the EC Financial Regulation as well as the relevant provisions of DCI, ENPI, Regulation implementing the 10th EDF, etc).
- ➔ Note that activities relating to Technical Cooperation may represent an entire action/programme (normally translated in a fiche of the AAP). It may also be a simple component within an action/programme which does not primarily concern Technical Cooperation.

2.1.2 Management modes and co-financing

The decision on the management mode is adopted by the Commission (College). As a consequence, the proposed management mode must be indicated in the appropriate fiche of the financial proposal, which will later become part of the financing decision/AAP.

In cases of delegated cooperation, the name of the delegated entity acting as Contracting Authority (beneficiary country, international organisation, national body of a donor country), will be specified in the decision, except in the very limited cases where it is not yet known[13]. The decision will also reflect the procedures to be used by the said entity. Where indirect centralised or substantial decentralised management is the proposed management mode, the corresponding fiche of the AAP will contain the appendix indicating the outcome of the ***ex-ante*** assessment. In cases of indirect centralised management, reasons for the choice of the national body showing compliance with the principles mentioned in Section 1.2 of this Annex will be specified.

The management mode is an essential element of the AAP. Any change of the management mode after the adoption of the AAP (for instance, from decentralised to centralised –budget support- or joint management) will require an amendment of the AAP (and hence approval by the College)[14]. It is reminded that different management modes can be combined in the same action (e.g. a part of the action decentralised and another part of the action under joint management to an international organisation).

Finally, if other donors co-finance actions with the Commission and, to that end, transfer funds to the EC budget/EDF, this should be specified in the financing decision/AAP (the co-donor should, previously to the launching of the approval of the AAP by the College, have signed the relevant transfer agreement).

Practical case 4: Changing management modes

In the context of a project to support the public health and nutrition sector in country X, the initially chosen management mode was decentralised management to the beneficiary country requiring an ex ante assessment under article 56 FR.

For exceptional reasons, no ex-ante assessment with the conditions of art. 56.2 FR was concluded prior to the adoption of the financing decision and a "fall-back" management mode had to be foreseen in the financing decision/AAP. The relevant Action Fiche of the AAP clearly stated that: "In order to apply the decentralised framework, a positive assessment shall be formalised before the adoption by the Commission of the present financing decision by the relevant Authorising Officer (AO) on the basis of an external audit report to be finalised by an external consultant by the end of August 2008. Should the results of this audit be insufficient to allow the relevant AO to make a positive assessment of the internal procedures of the Health Ministry, EuropeAid shall restrict in the Financing agreement with the Government from country X the delegated tasks to the minimum, maintaining as principle the ex-ante control of the Commission for contracting and payments." When the assessment was finally concluded it turned out to be negative. The management mode was then changed accordingly to centralised management, without any amendment of the financing decision.

In the current case, the financing decision still gave sufficient flexibility for this change to be undertaken without an amendment procedure. Thus, in order to provide clear flexibility to the responsible authorising officer, if at the moment of the drafting of the financial decision, the ex-ante assessment is not yet achieved, that should be pointed out in the financial decision as a condition for the adoption of the foreseen degree of decentralisation.

13 *In those cases, the criteria for the choice will be specified.*

14 *In certain exceptional cases, when the final method of implementation is uncertain at the moment of launching the approval of the AAP for objective reasons beyond the control of the concerned services of the Commission services, the draft AAP includes a "fall back" method of implementation. This practise has been usually accepted by DG BUDG and the Legal Service whenever the "fall back" method of implementation entails less risks or marge of appreciation than the method proposed as the first option (for instance, from decentralised to centralised management, but not the other way around).*

2.1.3 Contractual form

The Contracting Authority specified in the AAP would then conclude the necessary contracts to implement the Technical Cooperation.

- In **direct centralised and decentralised management**, the financing decision/AAP indicates the proposed type of contract(s) for Technical Cooperation (service, grants, etc) to be used by the entity managing the EC funds, as well as the estimated budget and calendar.
- Where, for objective reasons which are outside the control of the Commission, the choice of the type of contract is not yet clear at the moment of drafting the financing decision/AAP, such decision should at least contain the results that need to be achieved and the contractual options (and eventually conditions for the choice of the form of the contract at a later stage, including essential elements as budget, timetable, etc). This would provide sufficient flexibility to the responsible authorising officer without needing to amend the financing decision.
- In **indirect centralised and joint management**, it is in principle not necessary to specify in the AAP the type of contract that will be used by the national body or international organisation to implement the Technical Cooperation.

2.2 Financing agreements and other agreements

2.2.1 Financing Agreement (FA)

Once the AAP has been adopted, the Commission (at the level of the concerned Director) signs a financing agreement with the beneficiary country (note that some actions do not require the signature of this agreement, e.g. thematic programmes, or of amendments to the agreement for the cases under 2.2.2 of this Annex). The Agreement needs to be signed in N+1 (i.e. before 31 December of the following year of the adoption of the AAP/ budgetary commitment).

The basic structure of the financing agreement is: Special Conditions, General Conditions and Technical and Administrative Provisions (TAPs). The TAPs contain the main rules on governance and organisational set-up of the action, as well as detailed indications of budget, calendar, etc, which is based on the relevant financing decision/AAP. The TAPs should be precise enough to provide the general operational framework; but not too detailed to allow sufficient flexibility for the implementation of the action(s) and to avoid changes during the duration of the Financial Agreement.

Any amendment to the financing agreement (including the TAPs) must be in writing and in the form of an addendum. However, Articles 22 (Decentralised EC Budget) and 21 (EDF) of the General Conditions allow some flexibility for technical adjustments which do not affect the objectives and results of the project/programme and alterations in matters of detail which do not affect the technical solution adopted, and with no reallocation of funds. In such cases, the beneficiary country shall inform the Commission in writing of the amendment and its justification as soon as possible. Note that some restrictions apply in case of EDF (adjustments should be made within the limits of the amount foreseen for contingencies and, under 8th and 9th EDF, every extension of period requires a rider).

The change of the log frame may benefit from the flexibility mentioned above, when it is just a technical adjustment. As a rule, it could be possible to apply the same flexibility to the budget contained in a financing agreement under decentralised management as it is applied for the AAP (e.g. 20% of the total of the AAP, provided that there is no increase of the maximum budget – EDF has special rules as mentioned above). Adding or deleting activities (e.g. budgetary lines) should normally be considered an essential change. Specific rules on the extension of the operational implementation phase or closure phase are provided for in Article 4 (4) and (5) of these General Conditions.

Note that some changes to the financing agreement would require the previous amendment of the financing decision/AAP, when they substantially alter the nature of the action (change of management mode, for instance).

Q&A 8: Do we need an addendum to the FA if we change the management mode?

YES

Changes of the management mode are a substantial change and hence would require an addendum (for instance from centralised to decentralised management or from decentralised to joint management). As mentioned in point 2.1.2, unless foreseen in the financing decision, they also require the amendment of the financing decision. Changing the aid delivery method would also be a substantial change (e.g. from budget support to project approach).

In regard of the duration of a financing agreement, the total period of execution of a financing agreement is composed of (1) an operational implementation phase and (2) a closure phase.

It is reminded that the operational implementation phase indicated in the relevant fiche of the AAP/financing decision is indicative and this in accordance with the existing templates.

The operational implementation phase of a project can be delayed for a number of justified reasons (for example weather conditions, a political situation, a dispute with a contractor or with an administration, replacement of experts, technical problems, etc). In this case, the operational implementation period and consequently the total period of execution of the initial financing agreement can be extended by the signature of a rider (in case of substantial change requiring formal amendment of the financing agreement) or by exchange of letters; there is no need for a new financing decision amending the initial AAP/financing decision as long as the requested extension does not substantially alter the nature of the action.

Another option is to extend the operational implementation phase and to shorten the closure phase (from 24 months to for example 18 or 12 months – not allowed under EDF), so the total period of execution of the financing agreement remains the same. This is also to be done through the signature of a rider or by exchange of letters, under the conditions mentioned in the previous paragraph.

Practical case 5: Substantial changes requiring an addendum

In a project dealing with water sanitation systems of an ACP country, a national body part of the Ministry of Infrastructures was foreseen within direct decentralised operations to carry out the implementation of the activities through Programme Estimates. The ACP country, some time after the Financing Agreement had been signed, asked the EC to change the management modes. Instead of entrusting the body within the said Ministry, the NAO proposed to launch a restricted tender procedure in order to recruit a company for the carry out of the activities through indirect decentralised operations. Since the text of the FA detailed the type of contract to be used, this request had to be considered as a change of the technical solutions foreseen in the decision taken by the EC and therefore a rider for substantial technical modification was introduced in the circuit.

2.2.2 Other agreements

Where management modes entailing delegation of tasks other than decentralised management are involved, it is necessary to sign the relevant agreements: delegation agreement where tasks are delegated to national bodies under indirect centralised management and contribution agreement where tasks are delegated to international organisations under joint management

The agreements above are always signed by the Commission and not by the beneficiary country, and this in parallel or soon after the signature of the financing agreement (if the signature of the latter document is required – see below).

Useful link No 7: Agreements can be found in the annexes to the PRAG (annexes F1 to F5): http://ec.europa.eu/europeaid/work/procedures/implementation/international_organisations/index_en.htm

Parallel to or immediately before the signature of a delegation or contribution agreement, a financing agreement:

i. *will* be signed with the beneficiary country for the same action where, in addition to those delegated to an international organisation and/or national body of a donor country, the beneficiary country is entrusted with other budget-implementing tasks related to the same action (i.e. action is implemented through two or more management modes). This is for instance the case of delegation of residual tasks by indirect centralised management in the context of decentralised management; or

ii. *may* be signed, where the entirety of an action is delegated to the national body or international organisation and the beneficiary country has no budget-implementing tasks, but the beneficiary country and the Commission consider that a financing agreement is nevertheless necessary to accompany its implementation (this is particularly necessary for instance, for "Recipient-executed" trust funds managed by the World Bank Group). It is also reflects the need to involve the beneficiary country in the action even if it has no implementing/managing role (note that external aid is always implemented on behalf of the beneficiary countries, regardless the management mode).

Checklist 2: What needs to be taken into consideration during the decision-making phase?

N°	Question	Score	Notes for own use
1	Calendar: Has a timeline been prepared, where the time needed for the program maturation has been taken into consideration? Has the decision-making phase been prepared with sufficient anticipation to avoid delays or using the suspensive clause in a non appropriate manner (see section 3.1)?		
2	Has the management mode been decided (following ex-ante assessment where applicable)? Have the Commission services and partners discussed the most appropriate arrangement to implement the required Technical Cooperation (contractual type, requirements, tools, etc)? Is this duly reflected in the draft financing decision/AAP?		
3	What agreements do I need to sign before entering the implementation phase (MoU, transfer, financing agreement, delegation and/or contribution agreement; etc.)? Are they consistent and compliant with EC requirements and rules?		
4	Does the financing agreement, and TAPs in particular, duly reflect the overall operational and managerial set up of the action? Is it sufficiently precise but also flexible to guarantee a smooth implementation?		
5	During the implementation phase, does the level of details of the TAP entail program adaptation without addendum to the FA?		

Chapter 3 -

Phase using EC procedures (I): initial steps

This chapter explains:

- When can we launch a tender or call for proposal
- The importance to plan ahead in order to have documents of quality
- How to use the suspensive clause
- The procedures to be used to award a service or grant contract for TC
- The conditions under which a contact can be directly signed to mobilise national public administration expertise

3.1 Time line/use of the suspensive clause

The contracting of the activities described in the financing decision and agreement should be started (i.e. launch of tenders and call for proposals and/or signature of contracts and agreements) ***as soon as*** the last of these two legal acts have entered into force. Nevertheless, the launching of tenders/call for proposals may take place before, ***where justified*** (see Section 2.4.13 of the PRAG) and provided that a suspensive clause is explicitly mentioned in the tender documentation/guidelines for applicants. Furthermore, in case the launching takes place before the adoption of the financing decision, the use of the suspensive clause needs to be duly ***reasoned*** in the financing decision/AAP. In all cases, the use of the suspensive clause is subject to prior approval by the competent authority, as indicated in the Instruction Note on Derogations.

Useful link No 8: The Instruction Note on Derogation can be find:
http://www.cc.cec/dgintranet/europeaid/contracts_finances/fin_and_cont_rules/other_issues/index_en.htm

We should distinguish the following cases:

- Under **EDF,** article 19b of Annex IV of the Cotonou Agreement states that, in order to ensure an early start-up of the action, "the ACP States may, in all duly substantiated cases and in agreement with the Commission, issue invitations to tender for all type of contracts with a suspension clause, once project appraisal is completed but before the financing decision is taken. Such a provision must be mentioned in the financing proposal". The application of this clause under EDF is subject to a specific note.
- In **other cases,** the use of the suspensive clause is as a rule linked to objective circumstances which are external to the Commission (e.g. in principle a default in the planning or in the internal decision-making within the Commission services would not be sufficient to justify its use). Delays caused by external circumstances can be taken into account to use the clause:
  - The signature of a financing agreement by the beneficiary country is an external element and hence launching calls before its signature, but after the adoption of a financing decision, may be justified in most cases.
  - The use of a suspensive clause before the adoption of a financing decision remains exceptional and its use must be adequately reasoned (in the derogation request and the financing decision/AAP).

Useful link No 9: Useful link No 9: For further guidance,
see PRAG and note of the Legal Service in the following link:
http://www.cc.cec/dgintranet/europeaid/contract/important_messages/documents/suspensive_clause_before_the_adoption_of_a_financing_decision_note_sj_en.pdf

Contracts can only be signed after the financing decision has been adopted ***and,*** if required, the financing agreement has been concluded.

Under centralised (direct and indirect) as well as decentralised management where a financing agreement is signed with the beneficiary country, **all contracts implementing the agreement should be signed within a D+3 period (i.e. three years from the signature of the financing agreement), except audit and evaluation contracts**[15]. Under EC Budget, this rule is expressed in absolute terms and hence no derogation can be granted[16].

15 *Contracts under centralised management with no financing agreement should be concluded in the N+1 period, being N the date of adoption of the financing decision (direct centralised) or the date of entry into force of the delegation agreement (indirect centralised)*
16 *Cf. article 166 of the EC Financing Regulation.*

Q&A 9: How can I make sure to have a timely implementation of an action? Some tips

- **Planning ahead is key!** Any planning should take into consideration the procedural deadlines and anticipate possible difficulties during the implementation.
- To advance as much as possible with the decision-making phase, take advantage of the flexibility to have a financing decision/AAP approved well in advance, in particular in the year N-1 (after the adoption of the Provisional Budget, which usually takes place before the summer break).
- The launching of calls with suspensive clause before the adoption of the relevant financing decision/AAP remains exceptional under actions financed by the EC general budget (EDF has its own rules, as explained above). If the exceptional circumstances exist, it would then be possible to use it. For instance, the late approval of the relevant legal basis (instruments for EC external aid) by EU Member States (Council) and the European Parliament was an exceptional circumstance beyond the Commission services' control. But remember that its use shall be duly justified and reasoned (both in the prior approval request and in the financing decision/AAP).

3.2 Choice of the award procedure under EC rules

The rules on the procedures to be followed are described in sections 2.4 (procurement procedures), 3.2 and 3.3. (procedures for services) and 6.3 (award procedures for grants) of the PRAG. These rules need to be applied by the Contracting Authority, *except where this entity is authorised to use its own rules*.

3.2.1 Service contracts

For service contracts, the choice of the procedure depends on the estimated value of the contract[17], as provided for in article 241(1) of the Implementing Rules of the EC Financial Regulation:

i. For contracts above or equal to 200 000 EUR: international restricted procedure.

ii. For contracts above 10 000 EUR and below 200 000 EUR – framework contract or competitive negotiated procedure (i.e. no publication but at least three tenderers shall be invited).

iii. For contracts below or equal to 10 000 EUR – negotiated procedure with a single offer.

The framework contract ("FWC") is not only a contract but also a procedure through which specific (service) contracts are awarded. For contracts between 10 000 and 200 000 EUR, the FWC must be used. Only when the use of a FWC is impossible or a previous consultation has been unsuccessful, can the relevant Contracting Authority use the competitive negotiated procedure[18]. The use of the FWC is impossible for instance when no lot covers the service to be provided or, simply, its use is impossible in the sense of the next paragraph (the Contracting Authority has no access to the FWC). The argument that experts under the framework contract may be too expensive is not valid. If the competitive negotiated procedure is unsuccessful, then the negotiated procedure with a single offer may be used. These rules are established at the level of the EC financial rules and hence no derogation can be granted.

17 *These thresholds are different to the thresholds on the Practical guide to programme-estimates, which refers to thresholds for decentralised payments (cf. footnote No. 4 above).*

18 *Under new art 19c of Annex IV of Cotonou Agreement, the procedures for service contacts and award of grant are harmonised and hence the articles of the Implementing Rules of the EC Financial Regulation are applicable. For contracts governed by the previous version of Annex IV of the Cotonou Agreement, the General Regulation is still applicable. The General Regulation requires the use of the Framework Agreement for service contracts between 5 000 EUR and 200 000, whose specific contracts are thus signed by the Commission (the Commission remains the Contracting Authority – direct centralised management).*

Under the current FWC, beneficiary countries cannot act as Contracting Authority with some limited exceptions (IPA countries) and thus these cannot sign specific contracts awarded under a FWC. The use of the FWC by a beneficiary country is thus *impossible* in the sense of the previous paragraph. As a consequence, for service contracts between 10 000 and 200 000 EUR, the beneficiary countries may decide to either use the competitive negotiated procedure or agree that the Commission will award such contracts through the use of the FWC. In the latter case, the relevant financing decision and agreement may explicitly foresee that service contracts within the aforementioned threshold will be awarded and signed by the Commission under direct centralised management. In the absence of such clause, the beneficiary country could, on a case-by-case basis, decline to use its right to act as Contracting Authority for a specific service contract and request the Commission to award a contract under the FWC procedure.

Exceptionally, in specific circumstances, ***regardless of the estimated amount of the contract***, it is possible to use a negotiated procedure with a single offer (see section 3.2.3.1 of the PRAG)[19]. Amongst these circumstances (e.g. urgency, previous unsuccessful competitive procedure), one may be particularly relevant for certain areas of Technical Cooperation:

> *"where the services are entrusted to public sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field"* (Art 242 1(b) IR).

The conditions to apply this case of negotiated procedure are twofold:

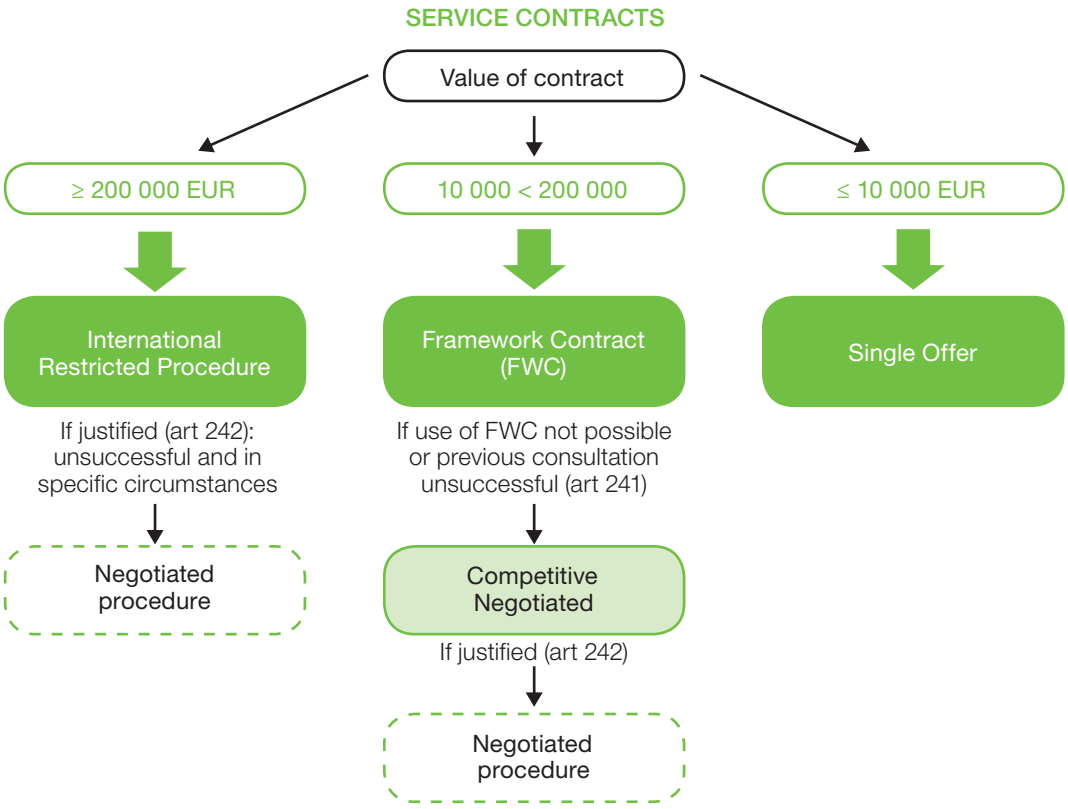
- the first concerns the nature of the potential contractor: public body (such as a Ministry or public agency of an EU Member State or third country) or a non-profit institution or association (any charitable institution or NGOs – this should be checked by seeing the Statutes and other legal documents);
- the second refers to the nature of the service to be provided. Technical Cooperation could be particularly concerned by the "institutional nature" of certain activities such as capacity-development, notably in those cases where they relate to typical functions of the public sector and/or where it may be very difficult or even impossible to find appropriate expertise in the private sector. In specific cases technical cooperation may of course also take place in the context of "assistance in the social field".

This case of negotiated procedure opens additional possibilities to the Commission to work, for instance, with public institutions from the North and/or South in a flexible and rapid manner, having in mind in all events the principles of non discrimination, objectivity, transparency and sound financial management. For instance, in case of contracting with a public body of an EU Member State, the negotiated procedure could be started with the launching of an informal call for expression of interests to all EU Member States. Note that the applicable EC rules contain special provisions and rules for public entities (see Q&A 7).

The use of the negotiated procedure with one single offer (or more) requires prior approval of the competent authority; in case of EuropeAid, it is the responsible Director or Head of Delegation. The request of this prior approval will indicate the circumstances and reasoning justifying the use of a negotiated procedure and how the above-mentioned principles have been taken into consideration. The use of a negotiated procedure should be duly reported to the Director General (more details on prior approvals, see link to the Instructions Note on Derogations in Section 3.1 of this Annex). Furthermore, the negotiations should be duly recorded in a negotiation report (see Annex a10 of the PRAG).

19 Where one of the circumstances provided for in article 242 of the Implementing Rules of the EC Financial Rules exists.

Graphic 3: Overview of procedures to award a service contract



Practical case 6: Use of the negotiated procedure

Case a)

For the preparation of actions of technical cooperation in security-related areas, it was considered necessary to make recourse to experts in relevant public administrations of EU Member States. Given the institutional nature of the envisaged activities (capacity-building measures for law enforcement and judicial authorities of the beneficiary countries), the negotiated procedure was used to contract public bodies for carrying out the requested services. In order to respect the principles of objectivity, transparency and non-discrimination in the selection of the public bodies to be contracted, the Commission services launched an informal call for expression of interests to all EU Member States (art 242.1 b).

Case b)

Within the framework of a regional programme, it was envisaged the setting up and the strengthening of potable water conveyance systems.

The aim of this technical assistance was to carry out the monitoring of several small photovoltaic solar pumping systems. This study aimed to make a series of field measurements with a view to better identify and evaluate some of the main parameters such as temperature, daily irradiation and irradiance used for the design of photovoltaic systems.

It was therefore planned to entrust the aforementioned study to a local research institute through a negotiated procedure. The justification for this negotiated procedure, following point 3.2.3.1.b) of the PRAG, was based on the fact that:

this scientific institution is a public body with the suitable technical equipment, the proved technical competences and a proven experience in the field of the solar photovoltaic systems;

the object of this study is of an institutional nature and the corresponding project aims to provide assistance to the people in the social field.

3.2.2 Grants

Grants are awarded following a call for proposals, by which the Contracting Authority announces in the Guidelines to the applicants the objectives it wants to obtain and select the proposals which better comply with these objectives. The procedures may be "open" or "restricted" (i.e. two-step procedure) – see Section 6.3 of PRAG.

It is possible to limit the eligibility of applicants on the basis of the ***objectives*** of the call (e.g. limit the call to academic entities in certain countries if, for instance, the objective of the call is to foster the exchange of expertise amongst such entities in a given region – for instance, the EU and the region in question), even if this objective criteria has consequences of limiting the rules of nationality and the type of organisations which can submit a proposal.

There are some exceptions to the rule of the call for proposals (see section 6.3.2 of the PRAG)[20]. These include cases such as crisis situations, emergencies, monopoly, etc. Since 2006, a new case of direct award has been added by the EC legislator, which may be of particular interest for grants related to Technical Cooperation:

> *"Actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals".*

The key criteria to apply this case of direct award are:

- The ***adequacy*** of the technical or administrative competence of the entity in question with regard to the ***action to be implemented***. Note that this would not require monopoly, just the well-proven competence would suffice, (e.g. judicial services when competence in law enforcement is needed; national audit bodies when special competence on e.g. public administration audit is needed, etc).
- The proposed action may not fall within the scope of a call for proposals launched at the same time;
- The reasons for its use must be substantiated in the award decision.

This case of direct award also opens additional possibilities to, for instance, actions to be implemented by administrations or highly specialised entities from the North and/or South in a flexible and rapid manner, having in mind in all events the principles of non discrimination, objectivity, transparency and sound financial management. For instance, in case of contracting with a public body of an EU Member State, the direct award could be preceded by an informal call for expression of interests to all EU Member States.

The use of a direct award of a grant requires prior approval of the competent authority; in case of EuropeAid, it is the responsible Director or Head of Delegation. The request of this prior approval will indicate the circumstances and reasoning justifying the direct award and how the above-mentioned principles have been taken into consideration (for more details on prior approvals, see link to the Instructions Note on Derogations in Section 3.1 of this Annex).

Note that as a general rule, the Commission cannot finance 100% of an action, since co-financing is a principle required by the applicable EC and EDF financial regulations. There are some exceptions to this rule (see section 6.2.9 of the PRAG), e.g. if it is essential for the action to be carried out. Whereas one of these exceptions has to be foreseen already in the financing decision of the Commission (interest of the Commission, e.g. visibility reasons), the others may be justified in the award decision by the responsible authorising officer.

Under decentralised management, the direct award of grants to local community-based organisations or other local organisations of the country of the beneficiary is possible. Each of these grants cannot exceed 10.000 EUR. For additional conditions, see Section 6.5 of PRAG.

20 *Cf. article 168 of the Implementing Rules of the EC Financial Regulation.*

Practical case 7: Use of grants to contract TC

Case a)

For the implementation of a technical cooperation action in the area of fight against drugs, it was considered appropriate to contract with EU Member States administrations, due to their specialised personnel and comparative advantage in working with beneficiary institutions in such specific and highly sensitive areas of assistance. Given the intention to support an action whose implementing details are proposed by a third party (i.e. the Commission does not impose its terms of reference but only objectives, together with the beneficiary country), and also with a view to ensuring that all potentially interested public administrations would be able to apply, the actions was designed from the formulation phase as a grant contract. A direct award was justified on the basis of the technical competence and high degree of specialisation required for this type of action (art. 168.1 f) IR). In order to respect the principles of objectivity, transparency and non-discrimination in the selection of the public body to be contracted, the Commission services launched an informal call for expression of interests to all EU Member States. A derogation to the co-financing rule was justified in the financing decision because the Commission, for reasons of visibility, was interested to be the sole donor of the action (art. 253.1 e) IR).

Case b)

The objective of an action was to establish a tool to enhance cooperation between European and local enterprises in a city of country X in order to improve links between businesses and science and technology stakeholders involving business, industry and public bodies from the EU and that country. Some of the activities were to establish common technology networks or to assist in the development of joint new technologies.

In order to implement this action, two options were considered in the beginning: service contract or grant contract. It was decided to design this action as a grant and thus leave to the applicants to propose the most suitable tool to meet the aforementioned objectives. Also, the proposed means which would develop these objectives (= the outcome of the action) should remain independent (not owned by the EC). For these reasons, the selected option was the award of a grant contract following a call for proposals. Following the open of the call for proposals, the grant contract was awarded to company Y which has developed a European Business and Technology Centre (EBTC).

Chapter 4 -

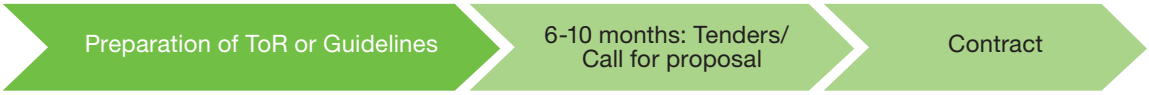
Implementation phase using EC procedures (II): award of contracts

This chapter explains:

- That time is needed to develop a tender/proposal of quality
- To well identify the competencies needed to execute the TC, this in accordance with the Partner's institutional context
- How different methods of assessment can be used to assess the quality of the expertise proposed
- The importance to involve the Partner in the awarding process whatever is the management mode

4.1 Preparation of the award procedure

4.1.1 Timelines and deadlines



As mentioned above, a call for tenders/proposals may last from 6 to 10 months. Other procedures are substantially shorter: framework contracts may take not more than one month and the negotiated procedures from one to 3 months, on average.

There are minimum deadlines for the submission of applications/offers (i.e. for restricted procedures: 30 days for submission of applications and 50 for submission of offers; under the framework contract it is 14 days for submission of offers; there are no specific rules for negotiated procedures). Establishing shorter deadlines requires a derogation from the competent authority (see Instructions Note on Derogations mentioned in Section 3.1 of this Annex) – See Section 3.3 of PRAG.

Deadlines must take into consideration ***inter alia*** the complexity of the contract to be awarded; so the quality of tenders is ensured. Hence, it is recommended to increase the minimum deadline indicated above ***in proportion to the complexity of the envisaged contract***, in light for instance of the highly-specialised technical requirements or the difficulty to find appropriate experts and for example when the tender is launched during typical holiday periods (July/August or December). It is particularly the case for the Framework contract, where the minimum of 14 days should only be used when under time pressure, instead it is good practice to give longer deadlines to framework Consultants to submit their offer, so as to increase the chances of identifying good experts. The proposed deadline of the call should be taken into consideration in the overall timeline of the programme mentioned in Section 1 and 2.1.1 of this Annex.

4.1.2 Preparation of documents for the procedure

It is of the utmost importance that, where the action relating to Technical Cooperation is not decentralised, the beneficiary country be involved in all the preparatory steps and, as a standard practise, give its approval to the tender dossier including the requirements and selection/award criteria (see Section 2.6 of PRAG). This may be applied by analogy to a grant aiming at providing Technical Cooperation.

Note that, where the action is decentralised, the beneficiary country may first require prior technical assistance in order to prepare the tender documents to be used, in particular the terms of reference or Guidelines.

In all cases, other key stakeholders (for instance, other co-donors) should also be involved during the preparation of the tender (e.g. discussion of the requirements, best ways to achieve the objectives, etc).

In the preparation of the documentation (terms of reference, invitation to tender, procurement notice, guidelines for applicants, etc) for the award procedures, the Contracting Authority should pay particular attention to the following elements:

- ➔ Using **local expertise** (not necessarily local experts) is important to pursue the aid effectiveness commitment and the principles of the EC Backbone Strategy. Note that, in order to guarantee respect of the rules of nationality and the principle of equal treatment and non discrimination, local expertise does not refer to the nationality or place of residence of the entity/experts but to the expertise acquired by them in the required country/region throughout the years.
- ➔ Contracting Authorities are encouraged to include local expertise as a requirement in the terms of reference for service contracts as long as this is expressed in objective terms. Where ***objectively*** necessary for the implementation of the service/action, it may be required that the contractor have to rely on a local partner network The terms of reference should clearly indicate whether the requirement relating to local expertise is an ***absolute*** technical award criterion (without which the tender will be rejected) or it is just a simple ***preference*** (See subpoint 3.3.10.3, part 1, of PRAG). It is important that, when the local experience is an absolute criterion for the evaluation of the technical proposal, the minimum requirements (number of years of experience, etc) should be realistic and, where possible, broad enough to allow sufficient competition (see point 6.1.1. of Annex b8 of PRAG – Terms of Reference). The above without prejudice to the preferential rules under EDF (article 26 of Annex IV of the Cotonou Agreement).

- The Terms of Reference should include minimum requirements on **past professional experience of the entity/experts**. To that end, the CVs of key experts are attached to the tender, as well as the documents substantiating the relevant experience (except for the FWC consultations since the submission period is short but they can be asked for in case of doubts by the evaluators). These documents would indicate whether the entity/experts have been active in a specific field.
- When *objectively* justified for the objective of the action to be implemented, the Contracting Authority may require the **involvement of public authorities** from the donor community and/or from the beneficiary countries in the provision of Technical Cooperation. In that case, the Terms of Reference or Guidelines would indicate how this requirement is linked to the objectives of the project/action and detail the level of required involvement (for instance, it may be required that they would be the only eligible tenderers or applicants, or that they should participate in a consortium with the lead tenderer/applicant, or simply they could be *associated* to the tender/application). It should also indicate whether this requirement is an absolute technical award criterion (without which the tender/proposal will be rejected) or not (See sub-point 3.3.10.3, part 1, and section 6.4.3 of PRAG). For more information on working with public authorities, see Sections 1.2 and 3.2 of this Annex.
- Unless otherwise indicated in the procurement notice/guidelines for applicants, both **legal entities** and **natural persons (individuals)** may submit a tender or a proposal. Note that the PRAG provides examples of selection criteria for companies and for cases where tenders from individuals are expected for a service contract (see Annex B2 of the PRAG – Procurement notice).

Q&A 10: How to encourage natural persons to participate in a procedure? Some tips

- Individual persons would rather participate in a procedure when the amount of the contract to be awarded is not too high and the tasks do not require a sophisticated infrastructure/backstopping organisation. The selection criteria, and the terms of reference, should reflect this and should avoid requirements which are excessive or disproportionate in relation to the tasks actually needed.
- The legal status of the potential tenderer can never be a criterion for the choice of the procedure.
- The procedures foreseen in the EC financial rules, reflected in the PRAG, must always be followed (e.g. if the use of the framework contract is possible for contracts below 200.000 EUR, it shall be used).
- The most likely procedure where natural persons would be inclined to participate is a service contract below 200.000 EUR awarded under “competitive negotiated procedure”. Publication/announcement could be done, for instance, in the local press instead of using a predefined list of potential persons. This publication would ensure transparency and wider competition (and therefore better price).
- Eligibility of this procedure could not be limited to natural persons. Note that the arguments by which prices submitted by a natural person would be cheaper is not valid since it is actually the market – through competition- who should establish what tender offers best value for money. Nationality criteria have to be respected at all times.
- Insert selection criteria for natural persons (together with the criteria for legal persons). The selection criteria could be different in light of the different nature of these persons, but never discriminatory (for instance, extremely simple for natural persons and disproportionately burdensome for legal persons). The award criteria should be the same regardless of the legal structure of the tenderer (natural or legal person) and based on profile/CV of the expert.
- Respect the requirements regarding the evaluation committee, evaluation procedure and evaluation report as mentioned in PRAG for service contracts.
- It has to be considered if advance payments should be done, as the provision of a bank guarantee for pre-financing is usually not applicable for the competitive negotiated procedure (only mandatory if pre-financing > 150.000 EUR).

- Other issues to be considered when drafting the tender documentations (for service contracts), which are explained in the Section 3.5 of this Annex:
  - It should be mentioned in the terms of reference that the beneficiary country shall approve the **reports** (See Annex B8 of the PRAG, Section 7.2 –Terms of Reference-);
  - Reference to the **interviews** to key experts shall be specified in the Invitation to Tender (See Annex B8 of the PRAG – Instructions to Tenderers-).

Q&A 11: How to prepare a tender dossier, particularly the ToR? Some tips (part 1)

See instruction text in the template ToR (fee-based contracts & global price) in annex B8 of the PRAG.

Global price contracts

Although the ToRs may specify the expertise required and may indicate the quantity of resources that are expected to be involved, in this type of contract, unlike the fee-based contracts, it is up to the Consultant to judge and quantify resources to employ (except for FWC where the ToR's should always give an estimation of the inputs). Therefore, the risks and responsibilities involved with estimating the resources needed for the required services are borne more by the Consultant than by the Contracting Authority (although the Contracting Authority will still have to make a reasonable estimation of costs in order to allocate sufficient funds).

In global price contracts, it is essential that the ToRs provide a sufficient level of detail on the expected outputs (deliverables) and quality, based on objective criteria, e.g which aspects does the mission have to tackle; which questions must it answer; which stakeholders should be involved; with what process (number of workshops, interviews etc); what will be the structure and content of the report (number of pages, annexes etc). When the deliverables are not sufficiently clear, there can easily be some misunderstanding between the contracting parties, e.g the Consultant may consider the deliverables finalised while the Contracting Authority may expect more work and results.

Note that global price contracts may also be used under the Framework contract procedure. For the FWC, it is foreseen that CRIS will automatically select by default "lump sum" for studies and "fee based" for advisory/implementation tasks. You may find clarifications on difference of approach between global price and fee-based contracts in Q&A 6.

Award criteria

It is reminded that it is of key importance to formulate award criteria (requirements) for the experts in your Terms of Reference that can be easily and objectively assessed (not only on papers, but also through interviews). The criteria should be drafted in a manner which will give as much flexibility as possible, notably to avoid having to cancel tenders for example because one out of four experts does not fulfil all requirements. If interviews are envisaged, you need to ensure that the criteria will allow you to adapt the scores as may be required. Example: if the only requirements stated in the ToR for a given expert were a university degree and 3 years of relevant experience, you will have difficulties to justify a lowering of the scores of the experts on the basis of poor language or communication skills discovered during the interview.

It is therefore good practise when drafting criteria to make a distinction between requirements that are "absolutely necessary to have" and "would be nice to have"; such as "the expert must have a bachelor degree, preferably in law, economics or administration"; "the expert must speak French fluently and preferably fluent Portuguese"; "the expert must have successfully managed at least 2 projects of a similar value", or "the expert must have excellent communication skills. Experience from giving training would be an advantage". In that way, it will be possible to accept as compliant an expert that possess the first, obligatory part of the criteria and anyone who has the "preferably" and "advantage" will simply be given a higher score.

For these reasons, and to avoid discrimination and excessive demands, formulations which could be disproportionate should be avoided: "the expert must have a master's degree in agricultural economics" (is such master really necessary or could we use a more open criterion?); "the expert must have 15 years of experience in sector X in country Y" (do you actually need that the whole period of experience be in that particular country? Experience in the EU/in the field or even in a neighbouring country/region would not be sufficient?); "the expert must have previous experience from EC-financed projects" (this may be discriminatory; you are excluding new experts which may have relevant experience).

In certain cases, instead of evaluating each key expert individually, it could be more appropriate to describe the requirements of the team of key experts as a whole (note however that this would require prior approval from the relevant services of the Commission to the necessary modifications to the templates (ToR, evaluation grid etc), if EC procedures are used). In the latter case, the Consultant is given more flexibility and autonomy on the choice of experts, and it is usually more appropriate for global-price contracts. For instance, a study may require two experts with a specific profile (public health or transport sector reform expertise, etc), and speaking good English and French. It may be sufficient that the team as a whole speaks the two languages (one may speak good English, the other good French), and not that each expert speaks both languages.

Q&A 11: How to prepare a tender dossier, particularly the ToR? Some tips (part 2)

Below is a concrete example that has been used for identification studies of road projects:

Option A: the number and profile of each expert is provided

The mission will be composed of [n] experts with the following profiles and qualifications:

Common requirements:

- minimum experience in [country/region] of [n] years;
- full working knowledge of [language], and of [other language[s]];
- excellent communication skills;
- computer literate.

Special requirements:

- [The expert/at least 1 of the experts] proposed should have practical experience in the preparation and moderation of participatory workshops
- [The expert/at least 1 of the experts] proposed should have solid knowledge of, and practical experience with [specific sector such as social analysis and planning].
- [The expert/at least 1 of the experts] should have hands-on experience with financial & economic feasibility studies of projects.

Expert 1: [Example]: team leader, transport economist/project planner & analyst, university education, extensive and relevant experience [minimum [n] years), in identification and feasibility studies, design and implementation of road projects; with consolidated knowledge of economic & financial feasibility analysis techniques

Expert 2: [Example]: highway engineer, university education, extensive and relevant experience (minimum [n] years) in road engineering design, with specific knowledge of road construction techniques and technical specification for roads

Option B: only the fields of expertise (functions) required for the study are provided, leaving to the consultant to indicate in his offer a team that covers all the fields of expertise required.

The mission will be composed of [1 or 2, max. 3] key experts with the following profiles and qualifications:

Common/special requirements:

- minimum experience in [country/region] of [n] years (years of experience may vary per expert irrespective of their position on the team)
- full working knowledge of [language], and of [other language[s]];
- excellent communication skills;
- extensive and relevant experience (minimum [n] years), in identification and feasibility studies, design and implementation of road projects, with consolidates knowledge of economic & financial feasibility analysis techniques.
- extensive and relevant experience (minimum [n] years) in road engineering design, with specific knowledge of road construction techniques and technical specifications for roads.

Useful link No 10: Note that there are a number of standard Terms of Reference which are already available and can provide useful inspiration, such as:

- Identification and formulation missions for road projects (see Transport Thematic Network)
- TA for the Supervision of road projects (see Transport Thematic Network)
- Environmental Impact Assessments for road projects (see Transport Thematic Network)
- Institutional Assessment Capacity Development study
- Technical audits for road projects (see Transport Thematic Network)
- Public Expenditure and Financial Accountability Assessment (see intranet AIDCO E1)
- Audit of Internal Control Systems (see intranet AIDCO E1)
- Targeted Budget Support (see intranet AIDCO E1)
- Environmental Impact Assessments
  (see under intranet AIDCO E6 the annex to the Environmental Handbook)

Do not hesitate to contact the Thematic Units in Directorate E that may provide a more recent update on templates and good examples to look at.

4.2 Steps in the evaluation process

4.2.1 Evaluation Committee

For services to be awarded under centralised management, including the FWC procedure, the beneficiary country will be, as a standard practise, ***invited*** to participate in the evaluation process as a voting member for the two phases of the procedure (short-listing of candidates and evaluation of tenders).

Principles to be borne in mind when inviting beneficiary countries to the Evaluation Committee:

- The implications of the participation of the beneficiary country in terms of calendar and costs should be taken into consideration in advance during the planning of the tender procedure.
- Unless the beneficiary country decides to pay for these costs, the costs of the participation of the representative of the beneficiary country may be supported by the Commission through the global allocation/ from the action/programme concerned and may include transport, hotel and daily allowance. For the FWC, the evaluation is not required to be ***in camera*** and the evaluation including the beneficiary can be made by exchange of e-mails.
- All other conditions applicable to a member of a Committee mentioned in the Instruction Note should be respected (e.g. in particular the requirements on command of the language of the procedure, confidentiality, impartiality, etc).
- Note that in some cases, the participation of beneficiary countries would in practise be very difficult (for instance, regional programmes, however the relevant regional organisation, where it exists, could be invited).

For calls for proposals, the participation of the beneficiary country is not foreseen by the mentioned Note. However, the Commission may still decide to invite the beneficiary country where it is deemed appropriate and where the ownership of the TC components by the beneficiary country is central.

Useful link No 11: For more information on the composition and role of the Evaluation Committee, please check the relevant Instruction Note at the following site: http://www.cc.cec/dgintranet/europeaid/contracts_finances/fin_and_cont_rules/other_issues/index_en.htm

4.2.2 Assessment of experts: checks and interview of experts

➔ The Evaluation Committee should as standard practise proceed **to check the past experience of key experts** (including checking references of employers or Contracting Authorities included in the CVs) in order to confirm the information provided in the CV with regard to the award criteria (e.g. that the services provided in the past were successfully completed). Whenever the Commission has put in place a data base on the performance of experts, such database may be used by the Evaluation Committee to confirm the information included in the CV of the key expert.

The Contracting Authority (and first, the evaluators) must ensure at all times an objective evaluation of the tenders/proposals and the principles of equality of treatment and non discrimination must be respected. For that reason, these contacts will only be used to confirm the accuracy of the information provided by the expert relating to his past experience and will not be used to introduce subjective elements in the evaluation of the experts/tender.

When as a consequence of these checks, it is proven that the CV does not reflect reality and hence these may affect the evaluation of the key expert by the Committee, e.g. by deducting points for the concerned award criterion, evidence that these checks have been carried out and its result must be duly substantiated (e.g. minutes of phone conversations and exchange of letters or e-mails; evaluations in database) and reflected in the report of the Evaluation Committee.

➔ **Interviews of key experts** are a standard practice (preferably by phone or videoconference) "whenever the expert proposed has no relevant experience on EC projects in the same language area, as evidenced by the CV". Interviews need to take place in cases where a contact with the key expert may give a better understanding of the qualifications, for instance where the communication or linguistic skills are important and these elements cannot be well appreciated just on the basis of a paper CV.

After the written provisional conclusions but before concluding the technical evaluation, the Evaluation Committee should, in line with the above, interview the key experts proposed in technically compliant tenders. This must be specified in the invitation to tender. Interviews should be duly prepared by the Committee and notified to the tenderer in question at least ten days in advance (see point 3.310 of PRAG and Annex b8 – Instructions to Tenderers (Annex II)-).

The interviews are particularly relevant for Technical Cooperation, where the quality of the key expert is essential for the successful completion of the service to be provided. On the other hand, interviews are costly and may cause considerable delays in the procedure. For that reason, if interviews are required, the use of telephone or videoconferences should be privileged.

Equality of treatment should be considered at all times. For instance when deciding on whom to call for interviews (the choice of the candidates to be interviewed should be based on objective criteria such as the score of the selected tenders, or the category of key expert that need to be interviewed).

Systematic interviews are not foreseen under the current contractual provisions of the FWC but specific modalities will be introduced for the next FWC Beneficiary 2009.

Q&A 12: How can I organise a successful round of interviews? Some tips

- ➔ Interviews with experts should be well prepared and planned!
- ➔ Tenderers with a provisional average score of 80 points or more may be invited. It may also be prudent to invite those tenderers who are just below the limit of 80.
- ➔ The Evaluation Committee should prepare in advance a list of questions; the same questions should be asked in each interview.
- ➔ All the members of the Evaluation Committee should be present during the interviews, including the Chairperson.
- ➔ Interviews must be minuted in an appropriate way (notably in case of complaints/appeals) and attached to the evaluation report.
- ➔ The interviews can have an impact on the score given to a tenderer but only on the basis of the announced award criteria (positive or negative) (example: it turns out that the expert has poor communication skills; it is only possible to reduce the score if it was indicated in the requirements that this expert must have good communication skills). In principle, only points related to the key expert interviewed could be modified (not the points for organisation & methodology). The changes should be properly reflected and explained in the evaluation report).

4.2.3 Approval of experts in centralised management

When the EC is the Contracting Authority, if the beneficiary country is not invited to the evaluation committee as voting member and where appropriate, the latter must be notified of the name of the proposed tenderer. **The approval of the key experts or of the experts retained for a FWC consultation must be sought from the beneficiary country before the award decision**. Note that the request for approval of the key experts is not a request for approval of the European Commission's evaluation as such. If the beneficiary country objects to the expert(s), it must give objective reasons for the rejection (e.g. information which would alter the conclusion of the Evaluation Committee – false information in the CV, conflict of interest, etc) and these reasons need to be assessed by the authorising officer before taking the award decision.

In case the authorising officer accepts the rejection, the second best offer may be chosen, if any. In this situation, the beneficiary country again has to be consulted. If there is no second best offer or in case of an accepted second rejection, the tender has to be cancelled.

The approval shall also be obtained for any replacement key expert proposed by the Consultant. The beneficiary country may not withhold its approval unless it submits duly substantiated and justified objections to the proposed experts in writing to the Delegation of the European Commission.

If the beneficiary country fails to issue or to reject its approval within 15 days of the date of the request for approval for the key experts, the expert is deemed to be approved. For the FWC procedure, the approval must be given before the notification of the results to the consulted framework Consultants, which takes place 14 days after the offers submission deadline.

The beneficiary country may only request the replacement of an expert if duly substantiated and justified objections are given in writing (see section 3.3.13 of the PRAG).

If the beneficiary country has been invited but did not attend, it no longer has the right to object the proposed expert under the EC procedural rules.

For replacement of experts in general, see section 5.2.

Practical case 8: Participation of the beneficiary country in the evaluation

For the TACIS Nuclear Safety programme, it is a common practise to invite a representative of the beneficiary country as an evaluator in the evaluation committee. Sometimes an interpreter/translator also has to be foreseen as the command of the English language is not always well enough. In this case, the Commission usually pays for the participation of one representative per country, the translation costs have to be borne by the country concerned. These participation costs include travel costs and per diems. Financing of these costs is done through the global allocation and a contract has been concluded to this end with one of the framework Consultants.

Q&A 13: Some tips relating to the participation of the beneficiary country

- ➔ So as not to jeopardise the timing of the evaluation, it is advisable to have a stand-by voting member, in the case the beneficiary representative would not be available at the last moment.
- ➔ Check in advance that the representative of the beneficiary country has a good understanding of the language of the procedure. Otherwise the services of an interpreter/translator may be required (this is important as well as when it comes to deciding who is financing the participation of the beneficiary (see practical case No 8). If known in advance, it could be useful to increase the number of copies required from the tenderers, in case a copy for the translator/interpreter is needed.

Practical case 9: Rejection of the expert by the beneficiary country

In country X (the beneficiary country), a tender was launched for carrying out studies in the field of health.

The EC delegation rejected the first tender as the key expert was a civil servant from the Ministry of Health (beneficiary of the study), being, therefore, in conflict of interest.

Then, the second best tender was proposed. The beneficiary rejected this tender as the key expert proposed was a civil servant in the same field in a local administration and would fall as well in conflict of interest. Third best tender was then selected.

Chapter 5 -

Implementation phase using EC procedures (III): execution of contracts

This chapter explains:

- How to involve the Partner in the TC monitoring process
- What in a contract is fixed and what can be modify
- Key issues in regard of the termination of a contract

5.1 Approval of reports by the beneficiary country in centralised management

To enhance the involvement and ownership of the beneficiary country, it should be involved in the approval of reports (i.e. all the reports defined in Annex B8 of the PRAG, Sections 4.2 and 7.2 (Terms of Reference). The procedure for this should be outlined in the Terms of Reference (see Section 7.2 of the said annex to PRAG) so that the Consultant is aware from the outset.

Special attention should be paid to the time limit to be agreed with the beneficiary country for the approval, since documents and reports are deemed to be approved unless the Commission has not expressly informed the Consultant of any comments within 45 days of receipt of the report (60 days for the final report)[21]. In the absence of comments or approval by the beneficiary country within the set deadline, it should be made clear to the latter that the reports are deemed approved.

5.2 Contract changes: terms of reference, replacement of key expert

After the technical assistance contract has been concluded, needs might arise to make certain amendments. The general principles governing modifications to contracts are laid down in the PRAG, Section 2.10. If certain changes are envisaged from the outset, e.g. activities under phase II of the contract depends to a certain extent on the outcome of phase I, this should be clearly indicated in the Terms of Reference so that the Consultant knows there will be adaptations during the implementation.

It is important to bear in mind that no modification to the contract may fundamentally alter the project or modify the award conditions prevailing at the time the contract was awarded, like for example the minimum requirements for key experts. For non-key experts (composition, profiles and input), there is more flexibility since their CVs are not part of the contract and they did not have an impact on the award of the contract.

As concerns experts, those may be replaced either[22]:

- ➔ at the request of the Contracting Authority: on the basis of a written and justified request if the expert concerned is considered inefficient or does not perform his/her duties, or
- ➔ at the request of the Consultant: in the case of death, illness, accident, resignation etc. of the expert

In case of replacements, the Consultant must propose a new expert within 15 days which has at least the equivalent qualifications and experience. If the Consultant does not comply with this obligation, a penalty of up to 10% of the remaining fees for the concerned expert may be imposed.

If the Consultant cannot provide a replacement which has the same qualifications and/or experience, the Contracting Authority may either terminate the contract if contract performance is jeopardised or accept the replacement with a reduced fee rate that matches the qualifications and experience of this expert. This is in addition to the 10% mentioned above.

A replacement of a key expert at the request of the Consultant after the award decision but before contract signature will in principle not be possible. In the case where a tenderer has deliberately concealed that a key expert will not be available at project start, the Contracting Authority may decide to cancel the award and exclude the tenderer in question (also from other contracts financed by the EC in accordance with section 2.3.4 of the PRAG). The contract will then be offered to the runner up, unless it is decided to restart the tender procedure.

Any additional costs for the replacement of the expert (e.g travel and relocation costs, insurances etc) have to be borne by the Consultant.

Recurrent replacements of key experts are a major problem. Since these experts have been considered crucial for the successful implementation of the project and the award of the contracts has to a large extent been based on the key experts proposed, their replacement must be discouraged as far as possible. **Therefore, proof and reasons for the leave of the key expert must be carefully examined bearing in mind that the expert has signed the Statement of Exclusivity and Availability when the tender was submitted. The replacing expert's qualifications/experiences should also be rigorously examined and compromises should be avoided. There must be no hesitation to impose the penalties/reduction in fees allowed by the contract.**

21 Article 27 of the general conditions for service contracts financed by the EC
22 Article 17 of the general conditions for service contracts finance by the EC

Q&A 14: What if the Consultant is asking for an extension of the implementation period?

Examine carefully the justification provided! Remember that this period was announced in the tender documents and the Consultant has committed to it. By extending the deadline, you are in fact changing a key condition of the tender and it could be considered unfair competition. Where justified, you may therefore consider applying the liquidated damages foreseen in the contract[22], in the case there is a delay in the implementation of the tasks.

5.3 Termination of a contract

The performance of the contract needs to be closely monitored to ensure good quality of the services and the achievement of the contract objectives. The Contracting Authority should respond as soon as there is a detection of problems, since a late intervention will usually be at the detriment of the project and at which time it will be more difficult to find appropriate solutions.

The Contracting Authority may however terminate the contract[23], for instance when the Consultant fails to carry out the services substantially in accordance with the contract,

In the case of breach of contract, the Contracting Authority has the choice:

- ➔ to ask for damages, and/or
- ➔ to terminate the contract.

In case of serious breach of contract, the Commission may, depending on the seriousness of the misconduct and after having duly given the Consultant the opportunity to present his observations, exclude the Consultant from EC-financed contracts for up to 10 years and/or impose administrative and financial penalties[24]. Note that such a decision is subject to an administrative procedure (followed by a Commission decision), therefore it is normally only used in serious cases.

The Contracting Authority needs to justify why the contract is terminated. The service contract specifies some of the justifications that can be used[25], which relates to an act or omission of an obligation by the contractor (for instance, breach of the contract, conviction of the contractor of professional misconduct or involvement in criminal activities, bankruptcy, etc). In such cases, after terminating the contract, the Contracting Authority may subsequently conclude a contract with a third party who will implement the contract in the place and at the cost of the Consultant. In this case, it is likely that a negotiated procedure could be used in light of the circumstances (ref PRAG 3.2.3.1, 3.2.12.1-2).

The Contracting Authority could invoke other cases where necessary. However, when the termination is not the contractor's fault, or it is caused by e.g. ***force majeure***, the contractor can request a compensation for losses, in addition to sums owing to it for work already performed.

Q&A 15: Can I terminate the contract because the performance is not adequate?

YES

The contract may be terminated pursuant to article 36 of the General Conditions of the service contract, giving a 7-day notice, explaining the reasons for termination.

23 Articles 34, 36 of the general conditions for service contracts financed by the EC
24 Articles 96 of the EC Financial Regulation and 99 of the Financial Regulation of the 10th EDF.
25 Article 36.3 of the General Conditions of the service contract financed by the EC.

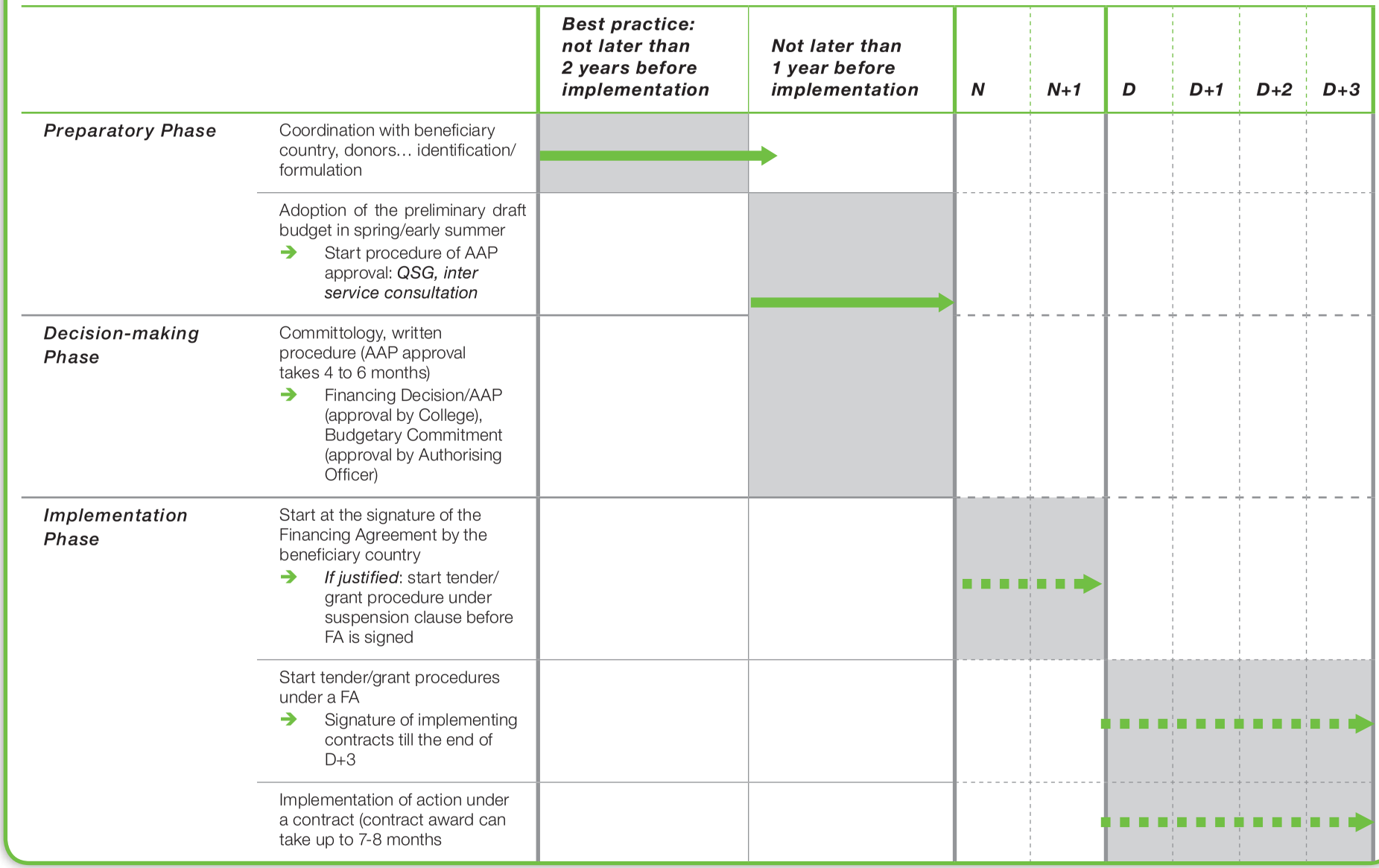
Practical case 10: Rejection of an expert by the Commission

This practical case concerns a service contract which has been awarded and signed by the EC (centralised management) after an international restricted tender. Immediately after the signature of the service contract, it appeared that the key expert was no longer available (the reality was that he did not want to come to the country concerned as there had been a bomb attempt). What did the EC do?

- ➔ in conformity with the contractual clauses of the contract we asked for the replacement of the key expert (with at least the same profile);
- ➔ a replacement was proposed by the company who was not found adequate;
- ➔ the contract was terminated by the Commission (see point 3.3.14 of PRAG);
- ➔ a new service contract was signed with the second company on the list (whose offer was still valid) following the restricted tender procedure

In case no other company is selected following the tender procedure, the only option is to cancel the contract and to restart the procedure if the contracting deadline permits this.

Graphic 4: Procedural steps to implement TC under a Financing Agreement



Checklist 3: What needs to be kept in mind during the implementation phase?

N°	Question	Result	Notes for own use
1	Have the time-line for the call/contractual procedures been adequately planned in advance (see graphic above)? In case of calendar problems regarding the implementation of a call, can I use the suspensive clause in accordance with the EC financial rules?		
2	Have the concerned services chosen adequately the procedure (in light of the thresholds) and considered what would be the most appropriate deadline to be given to potential tenderers/applicants? Regardless the thresholds, are there any of the circumstances justifying the use of a negotiated procedure/direct award of a grant (where these exceptional procedures are considered, are the services able to provide objective reasoning for its use and has a prior approval been requested)?		
3	Have the concerned services prepared the documentation in line with the requirements of the beneficiary country and having in mind the discussions amongst donors? Have the beneficiaries been involved and given their approval? Is it adequately tailor-made to respond to the said requirements (not too restrictive to allow competition, but not too large to allow participation of entities which objectively would not respond to these requirements?)		
4	Does the tender dossier contain the relevant provisions on use of local expertise, assessment of past experience of key experts and ways to proove it? Does it reflect the need to involve the beneficiary country, in case of centralised management? Does it provide instructions on interviews of key experts? Have I respected transversal considerations (such as EuropeAid Green Plan)?		
5	In cases of centralised management, has the Commission invited the beneficiary country to the Evaluation Committee and adequate measures have been given to its representative to be able to participate? (e.g. financial support)? If not, in case the beneficiary country objects to a key expert, does it provide objective reasoning for the Commission to reject the proposed tender without affecting the principles of the evaluation procedure – equality of treatment, non discrimination, etc-?		
6	Do I follow the contractual rules in case of replacement of key experts? If such replacement is necessary, does it have an impact on the contract justifying liquidated damages or even termination of the contract? Do I consider necessary to impose penalties?		