Together we can do more

General comments to the revision of the

Financial rules applicable to the general budget of the Union

(EU Financial Regulation)

ELTI Position Paper

Brussels, 1 October 2021

In 2018 the European Commission (EC) made a promise: It would replace complex rules and procedures relating to the implementation of EU funds with a single, user-friendly rulebook focussing on results.[1] ELTI members very much welcomed this approach as well as the real simplifications stemming from it and they continue to welcome any new real simplification measures. ELTI members are typically directly or indirectly subject to the EU Financial Regulation when a) implementing structural funds, b) implementing instruments of development cooperation, c) as intermediaries to the EIF and, this is new, d) in the context of InvestEU.

As such, ELTI members take great interest in the EU Financial Regulation revision and very much welcome the opportunity to participate in the ongoing consultation through this position paper, which refers directly to the relevant items of the consultation questionnaire.

Recognising the role of National Promotional Banks and Institutions

The launch of a single guarantee fund open to National Promotional Banks and Institutions (NPBIs), "InvestEU", as part of the 2021-2027 Multiannual Financial Framework (MFF), required a pillar assessment by the EC. Compliance work implemented to obtain this accreditation allowed NPBIs to demonstrate the equivalence and compatibility of their internal procedures with those of the EC. Based on the experience with ”pillar-assessed” NPBIs[2], the revision of the EU Financial Regulation, therefore, appears to be an opportunity to acknowledge the confidence in the rules and procedures of the implementing partners that have been positively assessed. In this respect, ELTI members recommend to recognise and explicitly mention NPBIs in the EU Financial Regulation in the context of their role as implementing partners in indirect management, and also take into account that they are financial institutions subject to supervision according to the national regulations adopted in transposition of the European compliance framework.

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliamen... - EUR-Lex (europa.eu)

[2] In the field of external action or ELENA

Further enhancing transparency:

While remaining fully committed to the value of transparency, ELTI members note that transparency not only comes with (additional) reporting obligations, but also finds a fundamental limit in the protection of personal data enshrined in the General Data Protection Regulation, GDPR. In this respect ELTI members are not in a position to answer to the question in the affirmative, since the public consultation does not yet provide sufficient elements on the proposed changes. EU support is very diverse, reaching both legal persons and natural persons (e. g. student loan programmes), comprising large and small amounts of support etc. Against the background of this addition, any such discussion should be guided by the principle of proportionality, which requires a differentiation between different categories of final beneficiaries as well as types of instruments and total EU support granted. ELTI members stand ready to engage in a dialogue with the EC on this subject.

Moreover, the consultation takes into consideration various solutions for strengthening, standardizing and homogenizing the control tools to protect the financial interests of the EU (i.e. single data-mining and risk-scoring tool, extension of EDES exclusion cases, etc.). On the one hand ELTI members share in principle the EC's objective to strengthen the safeguards to combat fraud, corruption and conflicts of interest, which could also contribute to improving the efficiency, coherence and clarity of the expected control requirements in the use of EU funds. On the other hand, however, NPBIs believe it is important to verify that these interventions are fully coordinated with already existing regulatory requirements, so that they do not constitute a duplication of the latter and therefore do not materialize in mere further formal requirements. Therefore, the related replies to the questionnaire cannot be in the affirmative.

Indirect management

ELTI members are currently undergoing the heavy pillar assessment procedure to become implementing partners in indirect management. At least in cases in which such a pillar assessment is a necessary precondition to access EU funds, the answer to the question on reliance on the appropriate due diligence of partners can only be affirmative. ELTI members undergoing the pillar assessment also note that this exercise is extremely complex and challenging on the EC's side too, due to the extensive amount of information to be analysed and processed. Stability should thus be assured regarding the outcome of the ongoing pillar assessment exercise – as such, it is important that this Financial Regulation revision does not introduce any new requirements or elements to it.

An explicit reference to the principle of proportionality would be very useful for the application of the EU Financial Regulation. Moreover, it is worth noting that the principle of proportionality is already enshrined in other EU Regulations governing the new MFF (see for example Article 39 of the Neighbourhood, Development and International Cooperation Instrument, NDICI Regulation). The EU Financial Regulation should introduce a clear reference to this principle to ensure that the same standard is applicable across the various funding instruments.

Proportionality should, for example, be applied when it comes to the requirements under Art. 155 (2) of the EU Financial Regulation, so that a risk-based approach could be adopted. To this end, an update of the Commission Communication C(2018) 1756 could also provide useful guidance on the implementation of the principle of proportionality in practice.

Furthermore, ELTI members underline once more that reliance on the due diligence of pillar assessed partners is an effective way to ensure compliance with EU law, in light of the thorough analysis of the partners' rules and procedure that is carried out during the pillar assessment.

EU (security and possibly any other political) interests

Simplification was a key goal of the 2018 EU Financial Regulation and ELTI members believe it should remain so. Introducing in the EU Financial Regulation a reference to political interests, no matter how justified they may be, risks introducing uncertain legal terms into a document that should, by all means be drafted as clearly and precisely as possible. Discussions or indeed provisions concerning such political interests should rather be inserted in the financial instrument in question and not be raised to the general level of the EU Financial Regulation as such, also since the respective strategic interests could differ greatly between the instruments.

Lessons learnt from the Covid-pandemic

In the present context, long-term investment is clearly the backbone of the European economic recovery. NPBIs provide a substantial degree of visibility to European action by deploying it locally and thus close to citizens. As implementing partners for indirect management of European funding, in accordance with Article 62 of the EU Financial Regulation, NPBIs not only contribute to aligning European and national policy objectives, but also ensure a high level of complementarity between promotional investment programmes financed by the EU and by the Member States.
ELTI, in cooperation with other associations, had already compiled a list of support measures introduced at national / local level during the crisis.[3] One key lesson from this comprehensive overview is that in many cases NPBIs played a prominent role in the immediate crisis reaction. This was possible not least thanks to the quick introduction of the Temporary State Aid Framework and to the relentless work of DG Competition. These elements, combined with the expertise of NPBIs, led to a very fast adoption and roll-out of much needed support measures.

As it stands today, the EU Financial Regulation played a very limited role in the crisis response. As such ELTI members can only welcome more flexible rules within the EU Financial Regulation for support measures that are limited in time and address a concrete crisis situation. Such measures could include a stronger reliance on the implementing partners' due diligence or even a deferral of due diligence for smaller amounts as well as simplifications on reporting obligations. Furthermore, it should be possible

[3] 2020.06.17 - ELTI NEFI AECM - Coronavirus COVID-19 Support Measures.pdf (eltia.eu)

to waive the remuneration requirement of budgetary guarantees for instruments linked to crisis response.

The blending of Next Generation EU (NGEU) funds with the regular MFF funds, combined with important delays in the setting up of new EU financial instruments and with extremely tight deadlines, poses numerous problems for the implementation of EU financial instruments. To ensure an appropriate response to any future crisis situation different mechanisms should be put in place.

Need to foster the logic of combination of EU grants with NPBIs' financial instruments

At an operational level, long-term investment means that ELTI members advocate in favour of financial instruments: for projects that generate sufficient revenues, this kind of instruments can be virtuous and effective. Evidence of this is the successful roll-out of the "Junker Plan". However, for other projects generating high externalities, grants are necessary to make the project happen, but can be combined with European or national financial instruments.
That is why ELTI members are also in favour of streamlining the combination of EU grants with NPBIs' financial instruments. We experienced such a case in the context of the so called CEF Blending Facility, now called Alternative Fuel Facility, with the CEF programme (DG MOVE). One of the key elements to the success of the CEF blending facility lies in its simplicity for project owners. To put it briefly, the CEF blending facility allows, with a limited envelope of EU grants, to generate significant investments in high value-added projects, thanks to the financial involvement of CEF implementing partners and its subsequent positive effect on private financiers. This kind of mechanism is at work in the social sector as well in the Research, development and innovation sector.

As supporters of the sustainable development of territories through technical assistance and investment, NPBIs gets involved when high value-added projects struggle to become a reality due to low profitability or an unfavourable risk/return ratio. While long-term support and patient capital investment remain key factors, ELTI members' experience shows that there is often a need for additional public support to encourage co-investors and thus to ensure the launching of initiatives. The InvestEU European guarantee mechanism represents a welcome contribution in this respect. Nevertheless, the combination of grants and investments should also be encouraged.

Indeed, the guarantee follows a risk-based approach. It is well tailored to large projects and small projects with common characteristics (loan portfolio, investment platforms). The grant-investment combination has a positive impact on financial return and improves it. It allows dealing with more specific projects, regardless of their size. In both cases, EU resources are used to generate a leverage effect on resources (NPBIs, private sector) and thus to maximise the impact in terms of investment. Both mechanisms also contribute to the significant challenge of simplifying the management of EU funds, which is the subject of this consultation.

The essential need to boost investments requires the mobilisation of both types of mechanism, depending on the type of project and the objectives pursued. They should be both recognised by the EU Financial Regulation. Moreover, their use should be encouraged in the revised text.

Removing obstacles to the deployment of European funds

Among the remaining obstacles in the operational deployment of European funds, the coordination and the complementarity of national, local and European public aid represent a genuine challenge. Thus, the use of these multi-level aid mechanisms should not be hindered by ceilings and prohibition of cumulation of aid. Furthermore, it should be achieved in a fluid way without causing incompatibility. For instance, in projects dealing with certain priority areas that may combine significant European and national aid, project promoters should be able to benefit from various public grants whether they be European, national or local.

Combination of EU promotional instruments with Financial Instruments

Some NPBIs are deeply involved in financing of construction and energy efficiency improvement of housing as well as social housing. They do so by distributing financial instruments which are deeply embedded in the market.

A significant share of European Regional Development Funds (ERDF) is also dedicated to energy efficiency improvement of buildings. The ERDF subsidies have proven their additionality as they allow to lower the total cost of financing of one operation, and to leverage on the available and existing financial instruments.

ELTI members believe it seems crucial that the intervention of ERDF in the form of subsidies is ensured, especially in the field of energy efficiency improvement of social housing. Promoting another financial instrument via ERDF on the market would not answer the need to lower the total cost of energy efficiency improvement of social housing while being redundant with the existing offer.

In that perspective, the development of performance-based financing options under ERDF can be a very fruitful tool to simplify and increase the financing of energy efficiency improvement of social housing. Indeed, performance-based financing relies on the logic of granting the subsidy in function of the level of energy efficiency eventually triggered by thermal renovation works. The same logic applies for some of the loans distributed by NPBIs. The two instruments can therefore be coupled together and granted at once to simplify the procedures undertaken by final beneficiaries and accelerate and amplify the energy efficiency improvement of buildings.

More generally we recommend that the EU Financial Regulation facilitates the combination of different European promotional instruments as well as grants and capital rebates with financial instruments wherever possible in order to make the most efficient use of the public budget.

Additional comments / remarks / proposals

- **Reliance on pillar-assessment, equivalence of systems, rules and procedures of the implementing organisation:** Recital 92: "enable the Commission to rely as much as possible on the systems, rules and procedures of those persons and entities which have been deemed equivalent to the ones used by the Commission…": We would like to suggest to fully embrace this recital and to have confidence in the positively assessed implementing partners. And we also would like to suggest to add a confirmation to the EU Financial Regulation that pillar-related obligations in Contribution Agreements or other contractual documents cease to apply, meaning that the systems, rules and regulations of the implementing organisation with regard to publication, archiving, exclusion, Non-cooperative-jurisdiction, etc. apply once the implementing organisation has been positively assessed. The reliance of rules and procedures of the implementing organisation is also supported by Art. 126 Cross-reliance on assessments.

- **Audits:** Time-consuming and frequent audits by different auditing bodies lead to a non-negligible increase in costs for the implementation of EU funds and discourage implementing partners. We would recommend to apply a single audit principle as mentioned in paragraph 218 of the recital. Besides, given the repayable nature of financial instruments, their audit procedures should be proportionate and limited to the eligibility check of the beneficiary before the funding is granted. Furthermore, the principle of proportionality in audit work along the lines of Art. 63 (2) should take into account the level of risk assessed." On Art. 127 on cross-reliance in auditing: The article is very important; however, it does not seem to have the effect implementing partners had hoped for when it was added. We would therefore suggest a full (or at least partial) cost coverage by the EU when the provisions in Art. 127 are not respected since these costs stem directly from the implementation of EU funds.

  We also notice gold plating applied among countries and even among regions from one country. This leads to considerable complications and increases audit costs. We invite the EC to look into this issue and propose a solution that reduces auditing costs.

- **IPSAS:** While ELTI recognises that the EC as such needs to report under IPSAS, Art. 80 II of the financial regulation clearly states that deviations are possible. We would propose to insert the following wording: "The accounting officer may deviate from the standards referred to in paragraph 1 if he or she considers this necessary in order to give a fair presentation of the assets and liabilities, charges, income and cash flow ***with internationally accepted accounting standards such as IFRS. This could in particular apply for actions under indirect management.***" In Art. 209, paragraph 4 (financial instrument and budgetary guarantees under indirect management) we recommend to only refer to Article 80 and to omit "IPSAS". Furthermore, we recommend to allow for later reporting dates: end of March (unaudited) and end of June (audited) for the previous financial year.

- **Forms of Union contribution: pre-financing, incurred cost:** Art. 125, paragraph 1 b: We would suggest to add the following elements to reflect the modus operandi of financing for development:
    - Pre-financing on the basis of legal commitments in indirect management is possible;
    - additional pre-financing possible when 70% of pre-financing is disbursed to recipient/ financial (sub-) intermediaries;
    - during the implementation reporting may cover on disbursements, whereas the final report covers incurred cost.
- Final beneficiary in relation to leverage effect in the definitions of Art. 2 (38): Add the following: ***"the final recipient may be defined as the level where the last additional leverage takes place in guarantee schemes and/or financial instruments.***" This would greatly facilitate the implementation of multi-layered guarantee and financial intermediation schemes in developing countries/ external affairs.
- Concerning the two-year limitation for disbursements under Art. 114 (Time limits for commitments), paragraph 6: In cases of indirect management of budgetary commitments – especially outside of the EU – this limitation has proven too strict in the past. Thus, we would suggest to allow for an extension of up to four years particularly in complex cases or, alternatively to add "with the exception of budgetary commitments under indirect management".

ELTI is ready and happy to discuss possible solutions as well as the impact of solutions proposed with the EC.

Together we can do more

The European Association of Long-Term Investors – ELTI

ELTI members represent an European-wide network of National Promotional Banks and Institutions who offer financial solutions tailored to the specific needs of their respective country and economy. Multilateral financial institutions complement the activities at national level with specific cross-boarder solutions or investments with an European impact. Following the specific public mission of each member the business model of each institution differs from country to country including different products and approaches. This is the same for multilateral ELTI members. Most of the members offer various debt-products but not all members have a mandate for investment in equity.

The 31 members of the European Long-Term Investors Association (ELTI) a.i.s.b.l. are major long-term investors and represent a combined balance sheet of EUR 2,5 trillion. The Association promotes and attracts quality long- term investment in the real economy, including:

- strengthening cooperation, including at an operational level, between European financial institutions as well as with other Institutions of the European Union (EU) acting as long-term financiers;
- informing the EU and its Institutions on the role and potential of the Members as institutions and agencies for long-term financing;
- strengthening the access of the Members to information on matters related to the EU;
- exchanging information and experiences among Members and with national and international organisations sharing the Association's interest in the promotion of long-term investment;
- developing the concept of long-term investment within the economic and financial sector and promoting academic research on long-term investments;
- representing, promoting and defending the shared interests of its Members in the field of Long-Term Investment in full transparency.

The Full Members of ELTI are generally national official financial institutions dedicated to the promotion of public policies at national and EU level[4]. The European Investment Bank (EIB) as the status of a permanent observer. ELTI also includes Associate Members notably multilateral financial institutions, regional financial institutions and non-banking institutions[5].

[4] Oesterreichische Kontrollbank (OeKB) Austria, Federal Holding and Investment Company (SFPI) Belgium, Bulgarian Development Bank (BDB) Bulgaria, Croatian Bank for Reconstruction and Development (HBOR) Croatia, National Development Bank-CZ (NDB CZ) Czech Republic, Caisse des Dépôts et Consignations (CDC) France, La Banque publique d'Investissement (bpifrance) France, KfW Bankengruppe (KfW) Germany, National Bank of Greece (NBG) Greece, Hungarian Development Bank (MFB) Hungary, Strategic Banking Corporation of Ireland (SBCI) Ireland, Cassa Depositi e Prestiti (CDP) Italy, Latvian Development Finance Institution (ALTUM) Latvia, Public Investment Development Agency (VIPA) Lithuania, Société Nationale de Credit et d'Investissement (SNCI) Luxembourg, Malta Development Bank (MDB), Malta, Invest-NL Netherlands, Bank Gospodarstwa Krajowego (BGK) Poland, Banco Português de Fomento (BPF) Portugal, Slovak Investment Holding (SIH) Slovakia, Slovenska Izvozna in Razvojna Banka (SID) Slovenia, Instituto de Credito Oficial (ICO) Spain

[5] Nordic Investment Bank (NIB), Council of Europe Development Bank (CEB), Long-Term Infrastructure Investors Association (LTIIA), Participatiemaatschappij Vlaanderen NV (PMV) Belgium, Fund Manager of Financial Instruments in Bulgaria (FMFIB) Bulgaria, NRW.Bank Germany, Consignment Deposits and Loans Fund (CDLF) Greece, INVEGA Lithuania, Turkiye Sinai Kalkinma Bankasi (TSKB) Turkey