2018 Discharge to the Commission

FOLLOW-UP QUESTIONS TO COMMISSIONER MIMICA

Hearing on 18 November 2019

1. In the Working Document to the Draft Budget 2020 Part IX, Funding to international organisations it is indicated that the Commission definition of an international organisation includes other non-profit organisations assimilated to international organisations by a Commission decision. Could you provide what are the criteria on which the Commission basis such a decision and since when has the Commission taken such decisions? How many decisions of this kind has the Commission taken and which non-profit organisations have been assimilated to international organisations? In which areas do they work and what budget they manage?

Commission's answer:

The criteria for assimilating a non-profit organisation to an international organisation were laid down by the legislator in article 156(3) of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (endnote 1)[i]. The article stipulates that the Commission may adopt a duly justified decision assimilating a non-profit organisation to an international organisation provided that it satisfies the following conditions:

(a) it has legal personality and autonomous governance bodies;

(b) it has been established to perform specific tasks of general international interest;

(c) at least six Member States are members of the non-profit organisation;

(d) it is provided with adequate financial guarantees;

(e) it operates on the basis of a permanent structure and in accordance with systems, rules and procedures which can be assessed in accordance with Article 154(3).

Within the scope of external action, and under the requirements of the preceding Commission's Rules of Application (endnote 2), the Commission has only adopted one assimilation decision until today: Commission Decision C(2014)9598 of 17 December 2014 on the assimilation of the Global Fund to Fight AIDS, Tuberculosis and Malaria ('Global Fund') as an international organisation for the purposes of indirect management of EU funds. The creation of the Global Fund was called upon by the Declaration of Commitment on HIV/AIDS adopted by the UN General Assembly at its 8th plenary meeting on 27 June 2001. The UN granted the Global Fund a standing invitation to participate as observer in the sessions and the work of the General Assembly by a resolution adopted by the General Assembly at its 64th plenary session on 16 December 2009.

The EU financing to the Global Fund to Fight AIDS, Tuberculosis and Malaria is reported in Annex I (‘Legal commitments to international organisations’) of the Commission’s Working Document to the Draft Budget 2020 Part IX (‘Funding to international organisations’): the table shows that in 2018 a total amount of 85 000 000 EUR was committed to the Global Fund.

2. The Director General of DG DEVCO has issued a reservation for 2018 concerning the error rate relating to Grants in Direct management for funds managed by DG NEAR on behalf of DG DEVCO. Under the section “Responsibility for the corrective action” several actions within the DG DEVCO action plan are targeting indirect management, including indirect Management with third Organisations. Could the Commission explain what is the state of play of implementation of these actions and what are the main challenges for the control over the indirect management with third organisations?

Commission’s answer:

First and foremost, as this DG DEVCO reservation has been reduced in scope and for 2018 concerns only the funds cross-sub-delegated to and managed by DG NEAR, there is a reference to the related actions by DG NEAR.

Secondly, for the sake of clarity/continuity related to the global action plan put in place since 2017, additional information is provided too. This includes the actions targeting indirect management with third organisations.

DG DEVCO updates its internal control action plan annually, inter alia to take account of issues reported in its annual activity report. Based on the assessment of DG DEVCO’s action plan following its reservation in the annual activity report for 2017 and the evaluation of underlying risks, the current 2019 action plan was adopted, taking account of the reservation in its annual activity report for 2018. Based on a prudent approach, some measures from previous action plans were carried over. Please find enclosed an Excel file with the state of play of the actions targeting indirect management with International Organisations and Development Agencies.

Additional question 2.xlsx

The main challenge in relation to control of expenditure under indirect management with third organisations is to ensure coordination and alignment of controls to make best use of available funds and staff resources.

3. Parliament in its resolution of 26/03/2019 for the Commission discharge 2017, para. 131, stated: "Notes with concern the large number of contracts awarded to a very limited number of national development agencies, with the attendant risk of re-nationalisation of EU policy contrary to the interests of greater integration of EU external policy; urges the Commission, in addition to granting the discharge authority access to the pillar assessment, to do so in such a way as to make it publicly accessible; in this regard, notes with concern the commercial focus of these national bodies invoked by the European Commission to restrict access to such information; calls on the Commission, as soon as possible, to strengthen and consolidate the monitoring of the tendering and contracting procedures to avoid any distortion of competition

between this limited number of strongly subsidised national agencies and other public and private entities with a clear European vocation;".

4. At the same time, active partners and several NGOs working in the field of development and cooperation projects have recently informed the Parliament of their worries in the same line so that some powerful Member States public or semi-private Agencies seem to monopolise more and more substantial shares of the projects implemented in the transition and developing countries as well as in the neighbourhood countries , and seem to gain, year after year , a growing influence on the EU development, cooperation and neighbourhood policies which might endanger the EU policy independence and infringe the Financial Regulation tender and subsidy rules as well as the FR provisions forbidding Commission to delegate its basic and decision powers to external operators.

   Could the Commission services provide a list of the contracts which have been attributed , since 2010, under the General Budget and the FED , to national agencies specialised in the field of development and cooperation projects and programmes , including the amount, subject, duration, justification of selection and of attribution, for each Member State, as well as, if the case may be contracts attributed to those national agencies in other EU Budget sectors (neighbourhood – pre—accession and enlargement, -cohesion, regional and social funds, environment, climate, education, research)?

<u>Commission's answer</u>:

National Member State development agencies in the sense of article 2(42) of the Financial Regulation (FR) are entities established in a Member State as a public law body or as a body governed by private law with a public service mission and provided with adequate financial guarantees from the Member State. Currently 33 agencies are entitled to become eligible for indirect management in pursuance of article 62(1)c) FR, and eligible for contribution agreements in calls for proposals in pursuance of article 154(7) FR.

The number of European pillar assessed organisations implementing the EU budget and the amount of funding delegated to them has grown in the last years. The Commission considers that this is a positive development that reinforces European presence in the field. Against the policy context of joint implementation, as long as there is a strategic implication of the EU with the EU Member States agencies at country level, there is no risk of re-nationalisation; rather it strengthens the European voice and influence at local level. The Commission is however aware that the size of Member States development organisations differs, and that it therefore follows that bigger organisations do implement a higher number of projects.

The Commission has strict procurement and contracting procedures set out in the EU Financial Regulation. It has to explain its decision, insisting on the comparative advantages, why an action will be implemented via a public sector organisation or via the private sector or NGOs. With particular regard to implementing partners in delegated cooperation, Commission procedures require that the choice of the implementing partner is justified in order to guarantee fair competition.

The appraisal has to justify the choice, in particular with a focus on highlighting the additional benefits of a particular partner compared to other potential implementing partners.

A list of all contracts (Grants and Procurement) as well as Delegation Agreements attributed since 2010 to National Member States Agencies (except the ones within the Ministries) including their amount, subject, duration and procedure justification is provided in annex.

Annex Q4 - Mimica.xls

Principles justifying the recourse to Indirect Management and the reasons of the selection of the specific bodies are referred in Annex 6 of DG DEVCO Annual Activity Report (AAR). Report, which can be found under the following link:

https://ec.europa.eu/info/publications/annual-activity-report-2018-international-cooperation-and-development_en

l'Érythrée

L'Union européenne, via le Fonds fiduciaire d'urgence de l'Union européenne pour l'Afrique, a commencé à soutenir l'achat d'équipements dans le cadre d'un **projet de reconstruction de la route principale érythréenne.** Ce projet a pour le but de reconnecter l'Éthiopie aux ports d'Érythréens. Il s'agit d'un **contrat de 20 mld d'euros**. Selon la fiche technique de l'UE concernant ce projet (projet sous-traité à UNOPS)[1], on voit que l'UE accepte que la compagnie érythréenne chargée du projet fasse appel à une main-d'œuvre de service national, c'est-à-dire des conscrits au travail forcé.

Je vous rappelle que le gouvernement érythréen continue de soumettre la majeure partie de sa population à un service national illimité[2], qu'il soit civil ou militaire, notamment en travaillant pour des entreprises de construction du gouvernement. Ce même gouvernement érythréen continue à enrôler de force des enfants en dernière année du secondaire, à les soumettre à une discipline militaire, tout en soumettant parfois les élèves et professeurs à du travail forcé et à des sévices physiques.

5. Comment la Commission a pu signer un contrat où elle reconnait que le gouvernement utilisera une main-d'œuvre de service national, c'est-à-dire des conscrits au travail forcé ?

Commission's answer:

Human rights, including rights at work, are at the heart of all EU external action, including in our relations with Eritrea. The EU does not support the practice of the indefinite National

[1]https://ec.europa.eu/trustfundforafrica/sites/euetfa/files/t05-eutf-hoa-er-66_-_eritrea_road_rehabilitation.pdf

[2]https://www.hrw.org/report/2019/08/08/they-are-making-us-slaves-not-educating-us/how-indefinite-conscription-restricts

Service in Eritrea, which – against Eritrean laws – is often prolonged beyond the foreseen 18 months.

The project in question is implemented through a Contribution Agreement with United Nations Office for Project Services (UNOPS). The funding is limited to the procurement of construction plant and equipment necessary for road rehabilitation. The overall objective is to contribute to reinforcing peace and economic integration between Eritrea and Ethiopia, therefore facilitating the ability of the Government to start the process of demobilising people from National Service.

Notwithstanding the fact that the project only covers procurement of equipment, the EU and UNOPS have committed to monitor the broader implementation of the works, in order to ensure that basic standards and safeguards are met, including on the working conditions.

There are various ways in which this is carried out, including: site visits (latest one conducted in November 2019); technical assistance available from UNOPS on the broader road rehabilitation and construction works, and on quality and standards including for labour safety; continued dialogue with the Red Sea Trading Corporation (RSTC), the Government's central procurement authority. RSTC also provides information on the people working on the project, including on their salaries and their rights.

The EU aims to encourage the Government of Eritrea to pursue its declared aim of further demobilising the National Service. Every year, a certain number of people are demobilised. The EU is encouraging the Government of Eritrea to issue clearer communication about that. For structural reforms to take place, the Government of Eritrea identifies two key preconditions: the creation of jobs to avoid that demobilising people will resort in massive unemployment, and peace and stability in Ethiopia, notably in the Tigray region.

Finally, the EU is committed to a 'dual track' approach with Eritrea. The EU uses political dialogue and the high-level dialogue established between Eritrea and the EU Special Representative for Human Rights, Eamon Gilmore, to raise issues of concern - including the National Service. In parallel, development cooperation projects aim to directly benefit Eritrean population and to create a more conducive environment to facilitate large-scale demobilisation from the National Service.

La Commission a répondu à ma question écrite (pour cette audition) sur les garanties en matière des Droits humains que « dans tous les contrats de l'UE et donc du Fonds fiduciaire pour l'Afrique il y a une clause (article 26.1 des Conditions générales) qui permet à la commission de suspendre un financement en cas de violation des Droits Humains ».

6. Considérez-vous M. le Commissaire le travail forcé de la population érythréenne comme une violation des DH ?

<u>Commission's answer</u>:
As mentioned in the previous question, the EU does not support the practice of the indefinite National Service in Eritrea and is encouraging the Government of Eritrea to pursue its reform. Forced labour constitutes a serious violation of human rights and a leading cause of poverty, inequalities and a hindrance to sustainable growth.

The Commission understands your question as referring to article 26.1 of the Financing Agreement template for General Conditions. A Financing Agreement is the agreement concluded between the Union and the beneficiary Partner Country describing the Union's action and defining for the part of the action implemented indirectly by the Partner Country its roles and responsibilities in the implementation of the funds. The action to which the member of Parliament refers, is however not implemented by the Partner Country Eritrea under article 158 of the Financial Regulation, but by the international organisation UNOPS under article 156 of the Financial Regulation. There is hence no Financing Agreement concluded with Eritrea for this action.

Instead, a Contribution Agreement has been concluded with United Nations Office for Project Services (UNOPS), which envisages a 'Suspension for exceptional circumstances' in its article 12.6 of the General Conditions:
"*The Contracting Authority may also notify the Organisation of the suspension of the implementation of the Agreement if exceptional circumstances so require, in particular: a) when a relevant EU Decision identifying a violation of human rights has been adopted; or b) in cases such as crisis entailing a change of EU policy*".

There has been no such EU Decision. It is reminded that the project in question concerns the procurement of construction plant and equipment. The EU project under no circumstances can be deemed responsible for potential human rights violation beyond the scope of its activities. On the contrary, the present project and its continuation can be an entry point for the EU to constructively engage the Government of Eritrea in a dialogue around basic standards and safeguards, including for labour.

7. Pourriez-vous adresser à la Commission CONT une copie du contrat du projet en question ? Nous voudrions nous assurer que ledit contrat contient effectivement la clause mentionnée sur les violations des DH et que l'UE n'accepte pas de mentionner l'utilisation du travail forcé comme quelque chose de normale en parlant d'un simple « dialogue poursuivi » avec le gouvernement érythréen?

Commission's answer:

In pursuance of article 155(7) of the Financial Regulation, the Commission is ready to make available full access to the Contribution Agreement for the purpose of the discharge procedure, through secured channels under the provisions of the inter-institutional Framework Agreement between the European Parliament and the European Commission.

Follow-up questions on the replies given to the written questions

Cooperation with other institutions / implementation partners (questions 6-9)

8. How does the lack of cooperation by the African Union Commission mentioned in question 7 affect the Commission's ability to drop that reserve in Future'?

Commission's answer:

Since the signature of an Aide-Mémoire on 15 April 2016 on measures to strengthen the financial management of the African Union Commission, the European Commission has not experienced any lack of cooperation from the African Union Commission concerning the financial management of European Union funds. The African Union Commission has implemented the actions agreed in the Aide-Mémoire and reported regularly on progress to the European Commission.

In view of progress achieved in the implementation of the Aide-Mémoire, the Commission contracted in 2019 an external institutional assessment (pillar assessment) of the African Union Commission's financial and administrative systems. The assessment's pre-final report concluded that there did not remain any substantial weaknesses in any of the systems in the assessed areas (pillars). If this is confirmed by the final report (expected before end 2019), DG DEVCO plans to lift the reservation over the African Union Commission management of EU funds.

9. The answer to question 8 is very short. Could the Commission explain in greater detail which concrete measures the Commission has undertaken/intends to undertake to improve the cooperation of the implementing partners with ECA during the audit process?

Commission's answer:

The Commission understand that this question relates in particular to the observation made by the European Court of Auditors about the lack of cooperation of some International Organisations.

Implementing partners are informed at headquarter level as soon as a transaction relating to them is chosen for analysis by the European Court of Auditors. In the future, the Commission intends to increase contacts at working level, by telephone and e-mail, with the implementing partners in order to anticipate any potential issues. If necessary, meetings with the organisations represented in Brussels will be held to clarify any open question.

10. Does the Commission encounter similar problems in its own audit work? How are these resolved? Where are the main problems here?

Commission's answer:

The Commission understands that this question relates in particular to the observation made by the European Court of Auditors about the lack of cooperation of some International Organisations.

During the Residual Error Rate Study, the same problems occurred some years ago, but they have been overcome.

Indeed, UN organisations and the World Bank Group have nominated specific coordination points that are informed when a transaction relating to them is sampled. If need be, a close follow-up is ensured by the Commission Services. Coordination meetings are held in order to clarify any open question and in case of major delays in the provision of documentation, reminder letters are sent to beneficiaries.

Residual error rate study (question 8)

11. The Commission indicates that the oldest transaction in the sample of the RER study is from 2006. How can this be the case in a residual error rate study for the financial year 2018?

<u>**Commission's answer**</u>**:**

Contrary to the ECA's approach, which only analyses transactions made during the reporting year, whether from open or closed contracts, the Residual Error Rate (RER) Study was designed to measure the soundness of the internal control system over time by analysing transactions relating to closed contracts for which all corrections have been performed. Having a different purpose, the RER study therefore also includes the analysis of transactions from past years.

In this context, the RER study methodology foresees that the population from which the sample is selected includes all transactions relating to contracts closed in a given 12-month-period (September 2017 to August 2018 in the case of the 2018 RER study). The transactions are then sampled on the basis of Monetary Unit Sampling, which means that transactions with a high value are sampled with a higher likelihood than small transactions, but the transactions are not sampled on the basis of the year when they took place. Contracts are implemented over various years so that the transactions included reach back a number of years.

The relevant contract, a Budget Support programme in India, was signed in August 2006. Tranches were disbursed in 2006, 2007, 2008, 2009, 2010, 2013 and 2014 to the Government of Chhattisgarh and in 2006, 2007, 2009, 2010, 2013, 2014 and 2016 to the Governments of Rajasthan.

Tranche releases could not be made as planned to Rajasthan in 2008 and again in 2011 and 2012. This was related to delays in the implementation during the first half of the programme (until 2010), as the Government of Rajasthan only approved its state water sector policy in 2010.

In 2013, an amendment to the Financing Agreement was requested and approved to extend the implementation period to allow time for the reforms to be completed. In February 2015 the Budget Support Steering Committee adopted a Budget Support exit Strategy accelerating the end of this programme. The final budget support disbursement was made in March 2016 and the contract was closed in November 2017 after the de-commitment of undisbursed funds.

NGOs (question 30)

12. The Commission replies that it has signed a revised Framework Agreement with the United Nations and is currently updating the Terms of Reference for the reviews. Can you tell us what the content of these Terms of Reference will be?

<u>**Commission's answer**</u>**:**

The Commission intends to use as a basis for verifications of operations implemented by the United Nations the same terms of reference used for expenditure verifications of other operations. In order to ensure that verifications make best use of the controls already carried out within the United Nations system, the Commission is working closely with the United Nations on a common understanding to provide a suitable framework for these verifications. The common understanding is expected to be agreed by exchange of letter early in 2020.

Causes of flight (question 37)

13. The Commission replies that it is difficult to quantify the contribution of its development policy to the reduction of causes of migration and the impact on the stability of the regions affected. Can you describe in more detail how exactly the Commission is conducting such quantification?

Commission's answer:

With regard to the reduction of the root causes of forced displacement and irregular migration, the EU has established a results framework for the EU Trust Fund for Africa as well as a number of dedicated systems to help determine the accuracy of its intervention logic as well as to track concrete results. This includes the Monitoring and Learning System developed for the EU Trust Fund for Africa as well as the Research and Evidence Facility, which are producing regular analyses and reports[3].

In addition, relevant information is also produced in programme and project evaluations. The Commission is for instance currently undertaking an evaluation on the EU Trust Fund for Africa, aiming at improving our understanding of how current programming is impacting on migration and stability dynamics and how to better measure this.

14. Some of the positive examples mentioned in question 37 relate to improving skills and employability. Is there a danger that this could lead to a "brain drain" and thus to more migration?

Commission's answer:

Improving the skills and employability of citizens in our partner countries, notably through improved Vocational Education and Training, is an important objective in itself under our EU development policy and cooperation. It can also contribute to provide alternatives to migration, under certain conditions. Clearly, investing in Vocational Education and Training alone does not create jobs on the local labour markets. Investing in skills is therefore only effective when a strong link is made to the needs, including future needs, of the local labour markets. For instance, under the *Africa-Europe Alliance for sustainable investment and jobs* a comprehensive approach is taken which brings investment, improved business climate, trade and skills training together.

Until local labour markets in developing countries are able to match the jobs required for an increasing, and increasingly skilled, population, migration may be considered an alternative for a limited group of people. If this migration is taking place in a well managed and regular manner, it can have a triple win – for the country of origin, for the country of destination,

[3]https://ec.europa.eu/trustfundforafrica/content/results-monitoring-and-evaluation_en; https://www.soas.ac.uk/ref-hornresearch/

and for the migrant and his/her family. This can only happen, if several conditions are met, such as ensuring that migrants' skills and qualifications are used to the maximum, that they can transfer their social benefits, support their family at home through remittances and investments, etc.

Furthermore, it is key that sectors are pre-identified that are of mutual interest for both countries of origin and destination so as to avoid draining talent from sensitive sectors in countries of origin. Furthermore, incentives to return could be either created in finding employment or in creating a business to continue activities begun while in the EU.

The European Union is supporting the authorities of Libya and a number of international organisations operating in Libya. There are a number of reports about the mass human rights abuses committed by the local authorities on the ground. As you wrote in the written answer, the EU Delegation conducts internal monitoring, but due to security reasons the Commission is heavily relying on external monitoring.

15. Has the EU Delegation reported in their internal monitoring systems serious abuses of human rights? Was the Commission able to follow-up on the problems reported by internal or by other bodies, such as NGOs and media?

Commission's answer:

Serious abuses of human rights in Libya have been reported by think tanks, the press and Non-Governmental Organisations (NGOs) present in the field. While the EU is very concerned about these reports, due to a lack of independent verification and triangulation of such information, the EU cannot base its own follow-up actions on them.

EU projects are closely monitored both on operational and financial aspects. Accountability of EU projects remains extremely high and relies on internal and external monitoring. As the delegation is currently not able to travel to Libya due to security concerns, our internal monitoring mainly relies on Results Orientated Mission (ROM), which are implemented by a framework contractor under supervision of the delegation and headquarters. None of the monitoring tools by the European Commission have found any irregularities or human rights abuses related to EU-funded actions implemented by our implementing partners (UN organisation, EU member state development agencies, International NGOs) or attributable to them.

The Commission is aware of the problems reported and reacts within the limits of its competence, i.e. providing political, cooperation and humanitarian support to the country. The Commission has not prosecution or law enforcement competence.

16. In your written answer you say "the EU is planning to increase these efforts by putting in place a third-party monitoring system verifying all results achieved in Libya". Could you, please, clarify what efforts will be made in this respect and how to avoid a situation where the EU is financing the authorities of Libya which are violating human rights on a mass scale?

Commission's answer:

In addition to the above-mentioned monitoring tools, the Commission is currently putting an external Third Party Monitoring system in place. It consists out of two elements: the first element is a results verification monitoring, whereas the second element examines the do-no-harm aspects of EU Trust Fund projects. Service providers under supervision of the delegation and Commission headquarters will implement both contracts. These contracts will also allow for independent triangulation of above-mentioned reports by think tanks, media and Non-Governmental Organisations (NGOs).

The Commission re-iterates that it is not financing directly the authorities in Libya but only channels funding through implementing partners, mainly UN organisations, INGOs and EU member state development agencies. Nor has the Commission any prosecution or law enforcement competence in Libya.

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[i] 1) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193 of 30.7.2018, p. 1);

2) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362 of 31.12.2012, p. 1);