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ANNEX 1

ANNEX

to the Communication from the Commission to the European Parliament, to the Council and to the European Court of Auditors

Recommendations for the establishment and the use of voluntary National declarations in the framework of Article 59(5) of the Financial Regulation

Recommendations for the establishment and the use of voluntary National declarations in the framework of Article 59.5 of the Financial Regulation

Introduction and scope

Article 59.5 of the Financial Regulation, which covers Shared Management with Member States, has introduced the possibility for Member States to provide a voluntary National Declaration in addition to the obligatory management declarations as provided by the bodies designated by the Member States to be responsible for the management and control of Union funds.

Following a request of the European Parliament in the discharge resolution on the financial year 2011, the European Commission established a Working Group with participants from the European Parliament, the Council and the European Commission to establish practical recommendations supporting Member States who are reflecting on the possibility of establishing a national declaration. Consequently, the recommendations, included in the present text, should be addressed to Member States who are providing or wish to provide national declarations pursuant to Art. 59 (5) last subparagraph of the Financial Regulation.

The Working Group met twice at institutional level and four times at technical level. The documents related to its activities are published at the following URL address: http://ec.europa.eu/budget/biblio/documents/iwgnd/index_en.cfm. This note summarises the current results of the presentations and discussions in the working group.

In parallel with the Working Group, work is also ongoing to establish the provisions and templates for the management declarations. The relevant proposals for Implementing Regulations are foreseen to be finalised in the second half of 2014. In view of the close link between management declarations and national declarations, the recommendations included in this document may require further review to reflect the final provisions of these legal acts once they are adopted and to take into consideration national considerations if needed. The first part of this document presents the recommendations from the Working Group on the structure and content of the National Declaration and on other important considerations for the use of it such as the choice of the addressees, the timing, the publication and the follow-up.

The second part presents general criteria which should ideally be taken into account when drafting a national declaration in order to increase the usefulness for the National and/or European bodies to which it will be addressed.

The third and last part provides an example of a text of a national declaration illustrating what it could include.

The term "national" authorities, covers also the federal, sub-federal or regional levels (or equivalent level according to the constitutional arrangements) where appropriate.

Part I. Recommendations:

Structure and content of the National Declaration

Article 59 of the Financial Regulation (FR) has introduced a new mandatory and comprehensive reporting instrument for the national bodies in charge of the management and control of the programmes under shared-management: the annual management declaration. While the FR describes the general principles inherent to these management declarations, the implementing acts (which are foreseen to be adopted before the end of the year 2014) will lay down the specific rules on the work and checks underlying these declarations.

In order to avoid duplication and parallel reporting processes, the Working Group therefore recommends structuring the National Declaration around two main components: 1) the management declarations and their annexes and 2) the national declaration itself signed at the appropriate level in the Member States. This approach is in accordance with the wording of article 59 (5) b, last paragraph that states that Member States may provide "national declarations" based on the information included in the annual management declaration and its annexes. The national declaration can replicate this information directly or base itself on it indirectly. Furthermore, in view of possible additional national information requirements, Member States are not restricted to the content of the recommendations, but may also include additional information in the declaration which is deemed necessary in a national context.

Who should sign the national declaration?

The Working Group recommends that the signatory "at the appropriate, preferably political, level" should be ideally empowered with oversight authority on the entities issuing the management declarations, being directly or, in case the national declaration is signed on behalf of the whole government, indirectly. The signatory should not only acknowledge the assurance declared and the reports submitted by management but also, in case weaknesses are reported that deserve corrective actions, he or she should have if possible the capacity to initiate processes or take decisions in order to facilitate/enable the implementation of those actions and have the legal mandate to enforce relevant actions.

Alternatively, different approaches may exist depending on the member states' specific constitutional requirements, responsibilities and accountability structures.

To whom should the national declaration be addressed?

National elected officials in the executive branch are not accountable to the Commission, but to the relevant national or regional/sub-federal legislative body, depending on the political structures of each MS. In consequence, the working group recommends that the declarations are addressed to and be debated and/or followed-up at the **relevant legislative level**. This could for instance be achieved by foreseeing the national declaration in a national legislative or regulatory instrument or, alternatively, by means of a report or opinion of the Supreme Audit Institution, which would prompt the debate within the relevant deliberative forum. A copy of the declarations should be sent to the Commission.

Timing for delivery of the national declaration

As regards the **timing** and to maximise its value for the reinforcement of the assurance and accountability chain, the national declaration should be ideally issued as soon as possible after the management declaration and the reports attached as required in FR Art. 59. Yet, in reality this is not always feasible as the timing of a national declaration may depend on other external factors (such as the follow-up of previous actions, external assessments, parliamentary scrutiny or timelines set out in national legislative or regulatory provisions). If this is the case, it would be desirable that the declaration is issued before the adoption of the synthesis report (re FR Art. 66.9) by the Commission in June of the year n+1. Nevertheless, any delivery after that can always be considered for potential use in the subsequent budgetary assurance cycle.

Publicity

The working group recommends that the Member States declarations are made public. This will raise the visibility of the commitment of elected representatives towards taking overall political responsibility and enhance accountability for EU funds. A high level of transparency would also strengthen their potential for raising awareness about the control systems of the EU funds in the MS. For these reasons the working group encourages MS to pursue a high level of publicity.

Incentive for MS to issue a national declaration

The submission of national declarations in addition to the mandatory reporting tools required by Art 59.5 could be an appropriate basis to streamline the control procedure, for example when setting out the risk criteria used to determine the risk profile of a MS within the context of a risk-assessment performed for an audit, or to allow Member States a degree of discretion in determining the audit scope and method taking into account the minimum requirements of the International Standards on Auditing (ISA's)without prejudice to the relevant legislative provisions. Yet, the Commission is determined to respect the general principle "of equal treatment" in accordance with the Statement issued by the Commission concerning the last sub-paragraph of FR Art. 59(5). Therefore any easing of control intensity or frequency would only be possible if the Member States' control performance has been assessed by the Commission as being indeed satisfactory, the voluntary national declaration meeting all requirements. Where there will be evidences that the issuance of a National Declaration has a positive and lasting impact on the good performance of national authorities, the working group recommends that the declaration should be used in the evaluation of the effective functioning of management and control systems of the Member States and if all principles are fulfilled, be used as a building block in the assurance process of the Commission.

Further assistance and monitoring

The Working Group recommends the Commission to continue providing support and feedback to Member States who issue already or are interested in issuing a national declaration. In this framework the Commission should collect best practices and report on

them through the annual activity reports of the DGs concerned and the synthesis report of the Commission. Other possible tools such as a “handbook” or information sessions in the relevant fora could be conceived. The Working Group also encourages the Commission to adopt a uniform approach by all DGs to national declarations. Including reporting information in these public documents would also allow monitoring the evolution over time.

Part II. General Criteria:

Based on the recommendations referred above, the National declaration should as much as possible include at least the following elements:

Refer to the EU and **national legislative or regulatory basis** of the Member State (if applicable).

Be addressed to the **relevant national legislative chamber or level,** and communicated to the Commission.

Identify the signatory, her or his function and whether the declaration is signed on a **personal basis** or on behalf of the **national or regional government** (or equivalent appropriate level according to the constitutional arrangements), in accordance with the legislation or the prevailing practices in the Member State concerned. Where applicable, the existing accountability link between the signatory and the directors/heads of the agencies or bodies responsible for the management should be mentioned explicitly.

The **sources of information** on which the national declaration is based. The declaration should be based on the management declarations and other reports required in FR 59.5: the annual accounts, the independent audit opinion(s) and the annual summary of audits and controls. The FR now requires the annual summary of audits and controls to also include the analysis of the nature and extent of errors and system weaknesses identified as well as the corrective action taken or planned. In addition, it would be desirable to complement this with a wider reference such as "the information at my disposal" which would prevent that a known relevant fact, not explicitly reported by management, could be deliberately ignored.

Scope of the assurance: The Commission needs to provide assurance on the five internal control objectives listed in the Financial Regulation Art. 32: legality and regularity; effectiveness efficiency and economy; fraud prevention and correction; safeguarding of assets and; reliability of reporting. This is done by management. It is suggested having a general formulation in the national declaration instead of covering explicitly all control objectives as in some cases declarations may not cover all five control objectives.

The **added value** of the national declaration at the "appropriate level" results mainly from the reinforcement of the commitment by management to address system weaknesses and the involvement of the relevant legislative level of the Member State. Therefore, the national declaration should contain an **explicit reference to the errors and system weaknesses** and a commitment to **back management for the timely implementation of the remedial measures**. This backing could consist of: political instructions to the various administrative

departments concerned and, where appropriate, allocation of resources and/or promotion of regulatory reform (e.g. simplification). Any additional information included as a result of parliamentary requirements may also increase the assurance given by the national declaration. Such complementary information could e.g. concern any national measures taken to protect the financial interests of the EU or external assessments by the national audit institutions. The Commission is recommended to take as much as possible any such information into account in building its assurance. Finally, independent assurance should be sought to be provided by an independent auditor (Supreme Audit Institution).

Part III. Illustrative examples:

The working group takes note of the following illustrative examples proposed for possible use. Alternatively, different approaches may exist depending on the Member States' specific constitutional requirements, responsibilities and accountability structures, in so far they include the essential elements referred to in the recommendations and general criteria under parts I and II.

Illustrative example 1

Having regard to the provisions of [national legislative or regulatory reference]

I the undersigned, in my position of and responsibility as [ ], on behalf of [ ], and based on the information at my disposal, hereby declare that

I have taken note/acknowledged (of) the management declarations, signed by the directors/heads of the agencies or bodies, in which they declare having assurance on [the completeness and accuracy of the information presented in the accounts, the use of the expenditure for its intended purpose and the management and control system put in place to guarantee the legality and regularity of the underlying transactions], joint to this declaration and listed in the annex. In my position as [ ] I am accountable for the oversight of the government agencies and other bodies entrusted with the management of the EU budget appropriations covered by these declarations, for a total amount of [ ] for the reporting period detailed in the Annex.

I (on behalf of the Government of……..) take overall political responsibility for the management of these EU budget appropriations, based on the information at my disposal, on the assurances declared by management and their accompanying reports[1].

I have examined the nature and extent of the irregularities and system deficiencies reported for the agencies and bodies in the annual summaries attached to the management declarations, as well as the remedial actions taken, on-going or planned by management to address them. Based on my own judgement and all information available to me, I have reasonable assurance that these measures would effectively address the weaknesses identified and I have taken appropriate action to support the management of the agencies and bodies concerned to implement them without undue delay.

Place and date

Signature

Annex

Section A

Agencies and bodies submitting management declarations free of material errors or system weaknesses.

Agency / programme managed/ expenditure for the financial year.

Section B

Agencies and bodies submitting management declarations including material errors or system weaknesses.

Agency / programme managed / expenditure for the financial year.

Illustrative example no. 2

Part I Accountability
This part contains a description of the prerequisites on which the declaration is issued and the scope of assurance. The text should include a description of the relevant EU-legislation as well as a description of the public administration and the internal control framework. This framework guarantees a sound financial management of the EU funds within the Member State and compliance with all applicable laws and regulations.

Part II Summary of accounts
The summary of accounts for EU funds consists of an income statement, a balance sheet and a cash flow statement of outcomes under appropriations and income headings. There should also be a description of the accounting principles used in the summary of accounts.

Part III Assessment of the internal control system
This part summarises the documents which assess the internal control systems of the managing/responsible authorities. It consists of:

- the declarations concerning accounts and assessments of internal control presented by the managements of authorities responsible for managing EU funds in their annual reports,
- the results of audits of the declarations from the National Audit Office/Supreme Audit Institution,
- the management declarations from managing authorities and
- the results of audits from the national audit authority/authorities for the EU programmes.

Reported irregularities and system deficiencies shall be described as well as remedial actions taken, ongoing or planned by management or signatory to address them.

Part IV The declaration
This part summarises the evaluation made on the basis of the accounts, the system of internal control, the declarations and audits summarised in Part III [including possible weaknesses and errors]. Based on this, the signatory submits the following declaration:

True and fair accounts
The summary of the EU accounts, consisting of an income statement, balance sheet and cash flow statement, has been drawn up in accordance with generally accepted accounting principles in [the MS]. [The signatory] makes the assessment that, in all essential respects, [except for the funds…] the accounts are true and fair.

Satisfactory internal control
[The signatory] makes the assessment that a regulatory framework for [central government] is in place to ensure satisfactory internal control of EU funds.

Illustrative example no. 3

Part I Signing

Having regard to the [Member State] Council of Ministers decision d.d. [date], I hereby declare, on behalf of
[responsible for issuing the National Declaration] in my position and responsibility as [function of signatory of the National Declaration], concerning the financial management of resources for the following funds in shared management and based on the information at my disposal, that
(per fund under shared management):

Part II Content of declaration

1. The functioning of the systems set up in the member state [name of member state], including measures for the management and control of resources from the [name fund] for the financial year [year], provide, to the best of my knowledge, reasonable assurance on the legality and regularity of underlying transactions, as well as of the eligibility of payment claims [with the exception of: mentioning deficiencies in the functioning of the systems]
2. The expenditure and revenue up to a total amount of € [amount] debit or credit to the [name fund] as included in the consolidation statement issued by [issuing authority] and in payment claims to the Commission covering the financial year [year], are, to my best knowledge, legal, regular, correct and complete up to the level of the final beneficiary [if materiality threshold is exceeded: excluding an amount of € [amount] [%] of irregular expenditure]
3. Pending claims up to a total amount of € [amount] for the [name fund] as included in the consolidation statement issued by [issuing authority] and in payment claims to the

Commission covering the financial year [year] are, to the best of my knowledge, legal, regular, correct and complete.

Part III Scope

According to the best of my knowledge, surveys and corrections on the approval of payment claims to the Commission are accounted for in the annex. The confirmations and reservations in this declaration are restricted to matters of material consequence, and are a direct result of audits and bar inherent insecurities due to the interpretation of EU-legislation.

<Signature>

Explanatory note

Accountability threshold
Mentioning of criteria and a tolerability threshold that apply for reporting special points of interest. It will be specified when the tolerability threshold is exceeded on fund level.

Approval European Commission
In the end the European Commission decides on the EU-conformity of national implementation and execution of EU-legislation. Consequently, there is an inherent risk regarding the scope and size of corrections by the Commission.

Weaknesses and remedial actions per fund

a.....
b.....
etc.