

Document: EB 2012/107/R.53
Agenda: 5(a)
Date: 13 December 2012
Distribution: Public
Original: English

E



Enabling poor rural people
to overcome poverty

Legal Opinion on the Question concerning the draft corporate level evaluation on efficiency

Note to Executive Board representatives

Focal points:

Technical questions:

Rutsel Martha
General Counsel
Tel.: +39 06 5459 2457
e-mail: r.martha@ifad.org

Dispatch of documentation:

Deirdre McGrenra
Head, Governing Bodies Office
Tel.: +39 06 5459 2374
e-mail: gb_office@ifad.org

Executive Board — 107th Session
Rome, 12-13 December

For: Information

Legal Opinion on the Question concerning the draft corporate level evaluation on efficiency

I. The issue

My opinion has been asked concerning the distribution to Executive Board members of the draft final report on the corporate level evaluation on IFAD's efficiency after January 7th 2013, when it would be provided to IFAD Management in order to check facts, accuracy and obtain comments thereon. The draft would be provided to EB members on the understanding that the document should remain strictly confidential.

The background of this request is that at its 74th session, the Evaluation Committee ("Committee") discussed the issue of when the corporate level evaluation on efficiency would again be considered and:

- a. Members of List A requested that the report and management's response be shared with the Committee for a meeting to be scheduled at the latest at the beginning of February;
- b. IOE underlined that the Evaluation Policy required the Report to be shared with Management for comments, prior to being finalized, and suggested that it could be shared (unedited) with EB members at the end of February or beginning of March;
- c. Management noted that the foreseen Evaluation should follow the due process established for all evaluations, in terms of the early feedback process between IOE and Management, before the final report is released;
- d. Committee members from List A indicated their agreement on IOE's proposal. However, this is on the condition that, were members of the Executive Board to request a copy of the draft final report after 7 January 2013, when it would be provided to IFAD Management, they would also be provided with it on the understanding that the document should remain strictly confidential.
- e. On this latter proposal, Management noted that legal advice would have to be sought and that it would revert after further consideration. This issue will be referred to the December 2012 session of the Executive Board.

Having examined the relevant fundamental texts and the IFAD Evaluation Policy, as well as the draft report of the 74th session of the Committee, my opinion is as follows.

II. Executive Board's authority to set the date for the evaluation report

1. Rule 6 of the Rules of Procedure of the Executive Board prescribes that the documents relating to a proposal to be considered by the Board shall, as far as possible, be distributed to the members and alternates at least thirty days in advance of the meeting at which such proposal is to be considered. It is important to note that this rule concerns a minimum. It does not exclude that an earlier submission date can be set when the Board deems that longer preparation time is necessary for a particular item. In fact, at its Fifteenth Session (April 1982) the Executive Board decided, *inter alia*, with respect to the application of this rule, that documents are to be dispatched during a period of time ranging from six to four weeks in advance of a given session of the Executive Board.
2. Thus clearly, if the Board decides that it needs more time than normally required to prepare for an item to be considered in a particular session, it has the power to set an alternative timeframe for the submission of the relevant document. Following such a decision, it will be incumbent upon management and the IOE to ensure that the documents related to that item are submitted in time in accordance with such determination.
3. In the present case, it appears that some members of the Executive Board would like the report and management's response to be shared with the Committee for the meeting scheduled at the latest at the beginning of February. According to the work planning this is deemed not to be achievable. However, it must be stressed in this regard that if – on the strength of Article 6.5(c) of the Agreement Establishing IFAD – the Executive Board determines that it wishes that the report and management's response be shared with the Committee for the meeting scheduled at the beginning of February, it will be incumbent upon

the IOE and management to make the necessary arrangements to deliver the documents at the time decided by the Executive Board.

III. Codified practice concerning the circulation of draft evaluation reports

4. It will be recalled that according to the Peer Review of IFAD's Office of Evaluation and Evaluation Function¹, the main principles and operational policies of the 2003 Evaluation Policy², continue to remain largely valid. Therefore, the revised IFAD Evaluation Policy³, adopted by the Board in 2011, has been based on the template and structure of the 2003 Evaluation Policy, while incorporating important clarifications and the recommendations of the Peer Review. It also updates the Evaluation Policy in view of changes that have taken place in IFAD and its evaluation function since 2003, such as the approval of the Fund's direct supervision and implementation support policy, the introduction of country presence, and further development of the self-evaluation system.
5. As per past practice, paragraph 49 of the revised Policy (hereinafter referred to as "the Policy") prescribes that before the report is issued, IOE will share it with IFAD management and, whenever applicable, with the concerned country's authorities and co-financiers (as appropriate) in order to check facts and accuracy and obtain comments. The phrase "whenever applicable" used in paragraph 49 indicates that, unlike corporate level evaluations, in the case of country programme evaluations the draft evaluation reports ought to be shared with the authorities of the country concerned for their comments prior to finalization.
6. According to paragraph 50 of the Policy, IOE will decide which comments should be incorporated in the revised (final) report. As a general rule:
 - (i) The draft report is revised to incorporate comments that correct factual errors or inaccuracies.
 - (ii) It may also incorporate, by means of a note in the report, judgements that differ from those of the evaluation team.
 - (iii) Comments not incorporated in the final evaluation report can be provided separately and included as an appendix to the report.
7. Paragraphs 49 and 50 of the Policy reflect the June 2012 *ECG Good Practice Standard for central evaluation departments*, adopted by all multilateral development banks, which provides that: "The CED transmits evaluation products to the Governing Board, normally after review and comment by Management, but without any Management clearance or Management-imposed restrictions on the scope and content of the products"⁴.
8. The authority of the IOE Director to issue final reports to the Executive Board and to the President is provided by paragraph 20(iv) of the Policy. This provision also makes it clear that the issuance takes place without prior clearance by anyone outside IOE. The importance of this feature is reiterated in paragraph 26 (iii) of the Policy. To emphasise that reports are issued independently, the first sentence of paragraph 53 of the Policy prescribes that all evaluation reports will be submitted to the Executive Board at the same time as they are forwarded to the President. This not only ensures the independence of the reporting, but also that all members of the Executive Board obtain the same information at the same time.

IV. Evaluation Committee

9. As the Evaluation Committee is the preparatory body for the Executive Board in matters concerning evaluation, it is the responsibility of the Committee to consider the final evaluation reports submitted by the IOE Director to the Executive Board and report to the Executive Board together with recommendations that the Committee may wish to submit. Indeed, as confirmed in paragraph 31(iii) of the Policy "[T]he Evaluation Committee shall report to the Executive Board on specific evaluation issues, and the latter provides feedback

¹ EB 2010/99/R.6

² EB 2003/78/R.17/Rev.1

³ EB 2011/102/R.7/ Rev.1

⁴ Evaluation Cooperation Group – ECG, Good Practice Standard (GPS) for central evaluation departments, Standard 17.

to IFAD Management". In the Terms of Reference and Rules of Procedure of the Evaluation Committee (EB 2011/102/R.47/Rev.1), the Executive Board has charged the Committee to review these reports prior to their consideration by the Board.

10. Thus neither the Policy, nor the Rules of Procedure of the Executive Board, nor the Terms of Reference and Rules of Procedure of the Evaluation Committee envisage that anything other than final evaluation reports be submitted to the Executive Board. It follows from the foregoing that the IOE Director is not supposed to share drafts or final evaluation reports with any individual member of the Executive Board. The IOE Director is required to submit its final reports to the Executive Board and to the President. Once these are submitted to the Board the Committee is required to review them and report to the Board thereon.
11. In short, consistent with the preparatory nature of the Committee, the Evaluation Policy codifies the past practice whereby IOE does not share drafts of evaluation reports with any individual member of the Executive Board or with the Board itself.

V. Ambivalence introduced by the revised Policy

12. This said, it must be pointed out that, despite the fact that it purports to merely codify the past best practice on this point, new language has been included in the Policy, which is ambivalent to say the least. Paragraph 52 reads as follows:

"IFAD management may receive, comment on and respond to the draft and final evaluation reports, but the President and other members of IFAD management do not have the right to approve, hold back, or otherwise modify such draft or final evaluation reports. The same applies to members of the Evaluation Committee and Executive Board."

13. The function of the first sentence of this paragraph is clear as it is in line with paragraph 49 of the Policy (mentioned under section III. 5), concerning the review of draft reports by IFAD management and, whenever applicable, with the concerned country's authorities and co-financiers (as appropriate) in order to check facts, accuracy and obtain comments. As far as I have been able to ascertain, the practice has always been that only Management receives, comments on and responds to the draft and final evaluation reports.
14. In light of the analysis under section II above, and in particular taking into account that the aim of the revised Policy was to codify existing practice rather than introduce a new one, it would appear that the second sentence of paragraph 52 of the Policy does not reflect what is intended. It seems that the sentence emphasises that final evaluation reports cannot be interfered with either by Management or the members of the Evaluation Committee and Executive Board.

VI. Need to remove the ambivalence

15. A different reading of the second sentence of paragraph 52 would lead to incongruences, as it would imply: 1) that Evaluation Committee and Board Members would be receiving also draft reports; 2) that individual members of the Executive Board and the Committee would be receiving documents and would comment on them outside of an EB session. That would be at odds with the collective nature of both bodies as well as with the requirement in the Policy that the Executive Board and the Committee deliberate on final evaluation reports. Indeed, it is unclear how individual members of the Board or members of the Committee would be provided with unfinished drafts of evaluation reports, whereas both bodies act only while in session or through the narrowly defined procedures for decision-making by correspondence.
16. This ambivalence also poses a challenge for the operation of paragraph 3.1(g) of the Terms of Reference and Rules of Procedure of the Evaluation Committee which provides that one of the tasks of the Committee is to discuss and report on all the IOE's corporate level evaluations and related management comments. Therefore the intention is that the Committee consider the reports and management's comments together. Allowing individual members to comment on draft reports without management's comments is not reconcilable with this rule.

17. Given the ambivalence, it is recommended that the Executive Board consider whether the second sentence of paragraph 52 of the policy is needed at all, considering the collective nature of the governing bodies of IFAD and how that could be reconciled with the principles of due diligence in the preparation of reports by the IOE and transparency in the interaction between the IOE, the Executive Board and the Committee.

VII. Way forward

18. If the Executive Board wishes to receive the final report and management's response for the purpose of enabling the Committee's examination at the meeting scheduled at the beginning of February 2013, the Board has the power to demand this.
19. If on the other hand, as a matter of principle the Executive Board wishes that its members receive and comment individually on draft evaluation reports, it should consider the issues raised above as well as the necessary adjustments to the applicable rules of procedure in order to ensure an orderly process and transparency.