

UNIVERSITY OF TAMPERE

School of Management

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Legal View of Controlling Development  
Cooperation Appropriations in Finland

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Master's Thesis

Master's Degree Programme in Auditing and Evaluation

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# Abstract

University of Tampere

School of Management

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Appropriations in Finland

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The focus of the thesis is on the control of the development cooperation appropriation maintained by the Ministry for Foreign Affairs of Finland. At its foundation, development cooperation is the political pledge of the international community, the UN and the EU to eradicate poverty, hunger and similar scourges of humanity. The mandate of this pledge is relayed through a legal chain of command from the UN to the Ministry for Foreign Affairs and its public servants for implementation.

The total amount of Finnish development cooperation disbursements or the flow of official development assistance has amounted to approximately one billion euros in the last few years. Following the continuing recession of Finland's economy, the proposed development cooperation budget for 2016 is about 700 million euros. The proposal was presented to Parliament despite the advent of the UN's new Sustainable Development Goals replacing the old Millennium Development Goals. The appropriation in question encompasses a sizeable and complex asset to control in which risk is inherent. As the State is responsible and accountable to the public, it tries to control the aforementioned risk in order to improve the effectiveness and public impact of development cooperation funds.

The method used is legal doctrine with traces of political and economic insights. The thesis explores what norms form the system of controlling Finnish public funds and especially development cooperation. The legal sources utilized range from international treaties and OECD standards to budgeting enactments of the State of Finland and internal regulations of the Ministry for Foreign Affairs. Due to the very nature of the issue as a combined legal, political and economic problem, the paper will utilize arguments and empirical notions from the aforementioned fields in order to fill empty spaces of law and construct viable bridges between provisions.

The key finding of the paper is the observation that national norms of control and budgeting form a fragmented and obscure network of multiple definitions and numerous criteria that do not seem to serve a uniform purpose. The concept of operational and financial planning entails the Ministry and development cooperation to induce public impact and upkeep effectiveness. At the same time, multiple external and internal control entities scan the flow of aid resources with different frameworks that are predominantly of private origin. All the while it is the wish of the Government that the control of development cooperation is harmonized and that performance guidance is sharpened. As a cherry on top, the true normative status of these provisions and doctrines is disputed.

# Table of Contents

|       |   |    |
|-------|---|----|
| 1     | Introduction – Development Cooperation amidst Disarray .....                      | 1  |
| 1.1   | Political Backdrop and Media Coverage .....                                       | 1  |
| 1.2   | Research Plan .....   | 4  |
| 1.2.1 | Field of Law .....  | 4  |
| 1.2.2 | Objective .....   | 5  |
| 1.2.3 | Scope .....   | 6  |
| 1.2.4 | Method .....  | 7  |
| 1.2.5 | Source Material .....   | 9  |
| 1.2.6 | Structure .....   | 10 |
| 1.3   | The Position of Soft Law .....  | 11 |
| 1.4   | Major Definitions .....   | 13 |
| 2     | Official Development Assistance Flow .....  | 15 |
| 2.1   | Why is Development Cooperation Organized <i>de jure</i> ? .....                   | 15 |
| 2.1.1 | United Nations – the Legal Tinder .....   | 15 |
| 2.1.2 | From EU Law to the Ministry for Foreign Affairs .....                             | 21 |
| 2.2   | How is Development Cooperation Classified in Practice? .....                      | 24 |
| 2.2.1 | Role of the OECD in Shaping Foreign Aid .....                                     | 24 |
| 2.2.2 | Categorization of Official Development Assistance .....                           | 26 |
| 2.3   | Chapter Summary .....   | 29 |
| 3     | Financial Administrative Law of Development Cooperation .....                     | 31 |
| 3.1   | The State Budget .....  | 31 |
| 3.1.1 | Constitutional Principles and the Composition of the State Budget .....           | 31 |
| 3.1.2 | Preparing the State Budget .....  | 33 |
| 3.2   | Financial Duties of the Ministry for Foreign Affairs .....                        | 36 |
| 3.2.1 | Adhering to the State Budget – Performance Guidance .....                         | 36 |
| 3.2.2 | The Development Cooperation Appropriation .....                                   | 40 |
| 3.3   | Chapter Summary .....   | 46 |
| 4     | Duty to Control .....   | 48 |
| 4.1   | Controlling State Funds .....   | 48 |
| 4.1.1 | Control as a Form of Responsibility and Accountability – <i>ratio juris</i> ..... | 48 |
| 4.1.2 | Relevant Authorities and the Framework of Control .....                           | 51 |
| 4.2   | Control in the Ministry for Foreign Affairs .....                                 | 56 |
| 4.2.1 | Deciding Upon Development Cooperation Funding .....                               | 56 |
| 4.2.2 | Dedicated Control of the ODA Flow .....   | 60 |
| 4.3   | Chapter Summary .....   | 64 |
| 5     | Thesis Summary and Discussion – The 2030 Agenda .....                             | 66 |
| 6     | Appendix 1 .....  | 70 |

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\* Translation from Finnish to English by the author.

## Abbreviations

|          |  |
|----------|--|
| ASA      | Department for the Americas and Asia                             |
| BP       | Budget Proposal  |
| CETS     | Council of Europe Treaty Series                                  |
| COSO     | Committee of Sponsoring Organizations of the Treadway Commission |
| CRS      | Creditor Reporting System  |
| ERM      | Enterprise Risk Management                                       |
| EU       | European Union   |
| EVA-11   | Development Evaluation Unit / Evaluation Office                  |
| DAC      | Development Assistance Committee                                 |
| DCD      | Development Co-operation Directorate                             |
| FINNFUND | Finnish Fund for Industrial Cooperation Ltd.                     |
| FTS      | Finnish Treaty Series  |
| G7       | Group of 7 (major advanced economies)                            |
| GNI      | Gross National Income  |
| GNP      | Gross National Product   |
| GP       | Government Proposal  |
| GROP     | Government Rules of Procedure 262/2003                           |
| HE       | hallituksen esitys (Government Proposal in Finnish)              |
| IIA      | Institute of Internal Auditors                                   |
| INGO     | International Non-Governmental Organization                      |
| INTOSAI  | International Organisation of Supreme Audit Institutions         |
| ISO      | International Organization for Standardization                   |
| ISSAI    | International Standards of Supreme Audit Institutions            |
| KEO      | Department for Development Policy                                |
| MDG      | Millennium Development Goal                                      |
| MFA      | Ministry for Foreign Affairs of Finland                          |
| MFAROP   | Ministry for Foreign Affairs Rules of Procedure 550/2008         |
| NAO      | National Audit Office of Finland                                 |
| ODA      | Official Development Assistance                                  |
| OECD     | Organisation for Economic Co-operation and Development           |
| OJ       | Official Journal of the European Union                           |
| OLAF     | European Anti-Fraud Office                                       |
| POL      | Political Department   |
| PPP      | Private Public Partnership                                       |
| ps       | parliamentary session  |
| SBA      | State Budget Act 423/1988  |
| SBD      | State Budget Decree 1243/1992                                    |
| SDG      | Sustainable Development Goal                                     |
| SOX      | Sarbanes-Oxley Act of 2002                                       |
| STY-00   | Unit for Internal Audit  |

|        |   |
|--------|---|
| TEU    | Treaty on European Union  |
| TFEU   | Treaty on the Functioning of the European Union                           |
| TUO    | Department for External Economic Relations                                |
| UN     | United Nations  |
| UNICEF | United Nations Children's Fund  |
| UNDP   | United Nations Development Programme                                      |
| UNEG   | United Nations Evaluation Group   |
| UNGA   | United Nations General Assembly   |
| UNTS   | United Nations Treaty Series  |
| UK     | United Kingdom  |
| US     | United States   |
| USAID  | United States Agency for International Development                        |
| VaVM   | valtiovarainvaliokunnan mietintö (Report of Finance Committee in Finnish) |
| vp     | valtiopäivät (parliamentary session in Finnish)                           |

## Tables and Figures

|          |  |    |
|----------|--|----|
| Table 1  | Millennium Development Goals (MDGs) and targets.....                             | 17 |
| Table 2  | Sustainable Development Goals (SDGs).....  | 18 |
| Table 3  | Total Development Cooperation Funding (million €) 2010–2016 .....                | 41 |
| Table 4  | Budget Allocation Table of Item 24.30.66 (million €) 2012–2016 .....             | 42 |
| Table 5  | Allocation 24.30.66.1 Distribution Plan (1 000 € estimate) 2015 .....            | 43 |
| Table 6  | Item 24.30.89 Appropriations (€) 2013–2016 .....                                 | 44 |
| Table 7  | Composition of country programmed aid 2013 .....                                 | 45 |
| Table 8  | Bilateral ODA in support of gender equality by sector (million €) 2013 .....     | 45 |
| Table 9  | Components of Enterprise Risk Management (ERM).....                              | 54 |
| Table 10 | Internal Budget of Item 24.30.66 (€) 2015 .....                                  | 70 |
| Figure 1 | ODA Flow in Development Cooperation .....  | 30 |
| Figure 2 | Input-Output Model in Relation to Performance Guidance.....                      | 38 |
| Figure 3 | Bilateral country-allocable ODA to top 10 recipients (million €) 2012–2013 ..... | 46 |
| Figure 4 | Control Regulations, Forms, Entities and Phases in the MFA .....                 | 65 |
| Figure 5 | Systematization of Development Cooperation Control in Finland.....               | 67 |

# 1 Introduction – Development Cooperation amidst Disarray

## 1.1 Political Backdrop and Media Coverage

Development cooperation is a noble endeavour, but it has had to weather harsh times in the current decade. The financial crisis of 2008 has taken its toll on public spending. The escalation of conflicts in the Middle East has created a surge of refugees and asylum seekers. This European migrant crisis of 2015 is the most recent topic under which the objective and usefulness of development cooperation is being questioned<sup>1</sup>. The Proposal for the Budget of Finland 2016 was unveiled by the Government on 27 September 2015 and the approval process is currently ongoing<sup>2</sup>. With ever growing media pressure and scrutiny, the Government proposed cutting down the development cooperation budget by about 200 million euros from the established appropriation of one billion euros<sup>3</sup>.

Economist Dambisa Moyo published her book *Dead Aid* in the year 2009. In it, she aggressively criticizes development aid and claims that sending aid has locked the developing states into an environment where corruption, the distortion of markets and poverty grow instead of prosperity. At the same time, similar news articles started to appear in national media. The former Finnish ambassador to Mozambique and Kenya, Matti Kääriäinen, recently joined the opposition by publishing his own book titled *Kehitysavun kirous*<sup>4</sup> in 2014. According to him, resources and capital flow to the elite of developing countries instead of to the development of democracy and governance. He states that development cooperation has not met its goals.<sup>5</sup>

Development cooperation is being bashed from multiple fronts as ineffective waste. For example, recent headlines of *Helsingin Sanomat*<sup>6</sup> tackled at the use of tax paradises in development aid through the secretive FINNFUND and the decision to funnel more aid funds to FINNFUND while decreasing other fund assets<sup>7</sup>. The subsequent FINNFUND decision to aid a controversial dam on the Mekong River in Laos also met resistance, since the project

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<sup>1</sup> *Helsingin Sanomat* 09 October 2015.

<sup>2</sup> Parliament's Special Committees will release their statements on 5.11.2015 and the follow-up debate will be held on week 51, see Parliamentary Office 2 October 2015.

<sup>3</sup> Ministry of Finance [budjetti.vm.fi]: GP 30/2015 ps: BP for the year 2016, main division 24, chapter 30 p. 1.

<sup>4</sup> 'The Curse of Development Aid' in English.

<sup>5</sup> *Helsingin Sanomat* 21 January 2015.

<sup>6</sup> *Helsinki Times* in English.

<sup>7</sup> *Helsingin Sanomat* 11 July 2015; *Helsingin Sanomat* 24 August 2015.

owner is listed on EU's tax paradise list and NGOs are reporting negative environmental effects<sup>8</sup>.

In 2012, the investigative journalism program Yle<sup>9</sup> MOT<sup>10</sup> covered the so called Costa Rica-Instrumentarium corruption case<sup>11</sup>, in which Finnish development cooperation funds were suspected of abuse. According to interviews of the program, the Finnish investigation was deemed as too slow and unresponsive.<sup>12</sup> Indeed, Ministry for Foreign Affairs filed a crime report to the National Bureau of Investigation in 2005 after Yle revealed the suspected bribery. The Finnish trial was finally held in 2013. It was suspected that up to 8.7 million dollars were used to bribe Costa Rican officials. As a result of the investigation by the Costa Rican authorities, seven persons were imprisoned in Costa Rican jurisdiction in 2009 (including the former president of Costa Rica, Rafael Ángel Calderón Fournier) while all the charges in Finnish jurisdiction were dropped. The case also sparked discussion in Parliament.<sup>13</sup> Yet, despite all the negative news, 87 % of Finns say that development cooperation is very important or fairly important<sup>14</sup>.

This dilemma fueled my interest in the subject at hand. I questioned why development cooperation is the attention of so much scrutiny in contrast to many other public budgetary issues. How is it audited and evaluated according to law? Are there legal deficits and problems in Finnish Law concerning development aid control?

In the European Union (EU), development cooperation was incorporated into EU Law as far back as 1957 with the Treaty of Rome. From supporting former colonies, the EU has progressively evolved to more diverse foreign aid. The Treaty of Lisbon finally enforced this stature, when the eradication of poverty was named as one of the goals the Union. For example, in 2010 the EU signed the Cotonou Agreement between the African, Caribbean and Pacific countries in order to expand on the aforementioned goal. In the same year, the EU conformed

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<sup>8</sup> FINNFUND is considered a financial institution and some of its documents are declared trade secrets. Helsingin Sanomat 07 September 2015.

<sup>9</sup> Yle (Yleisradio Oy) is a State owned media channel.

<sup>10</sup> MOT stands for 'which is what had to be investigated' ('mikä oli tutkittava' in Finnish). It is a word play on the Latin phrase quod erat demonstrandum ('which is what had to be proven') usually used at the end of a completion of a mathematical proof.

<sup>11</sup> See 2400/R/151/07.

<sup>12</sup> Yle MOT 2012.

<sup>13</sup> Yle MOT 2013; Written Question 853/2012 ps p. 1.

<sup>14</sup> Taloustutkimus Oy 2015 p. 5.



to aiding the United Nations (UN) in achieving the Millennium Development Goals (MDG) by 2015.<sup>15</sup>

On 25 September 2015, the new Sustainable Development Goals (SDG) were unanimously adopted at the UN Sustainable Development 2015 Summit<sup>16</sup> as a part of the so called Post-2015 process. The SDGs superseded the MDGs, as the deadline of the MDGs was the year 2015. Consequently, most of the SDGs are set out to be completed by 2030. Even before the SDGs were finalized at the Summit, they were causing changes in the global development cooperation scene<sup>17</sup>.

Among UN and EU, the Organisation for Economic Co-operation and Development (OECD) is also a major organization in the development assistance field<sup>18</sup>. Most of legitimate international development cooperation standards and guides are crafted by the OECD. Development aid covers a vast number of different instruments, transactions and cash flows. In Finland, The Ministry for Foreign Affairs of Finland (MFA) is mostly responsible for the coordination of development cooperation in Finland. It can distribute aid to multiple targets in multiple ways. Targets include *inter alia* a country, a region, a non-governmental organization (NGO), EU, UN, a sector or an individual project. Aid can be humanitarian assistance, debt relief, direct transactions, machinery or a contract. Altogether the channels of development aid form a large group.

“Risks are inherent in development cooperation<sup>19</sup>”. In addition to misuse, the funds may be used improperly or unprofitably. The objective of control is to stop misuse and ensure that development cooperation funds are used rationally, suitably, effectively and according to agreements. Control can range from audits to physical inspections and to notice obligations. In the MFA, actual internal control is maintained by the operational units, the Unit of Internal Audit and the Development Evaluation Unit.

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<sup>15</sup> European Union 2014 p. 3.

<sup>16</sup> UNGA Resolution 70/1. The Summit was preceded by three annual High Level Political Fora where the SDGs were prepared.

<sup>17</sup> OECD 2015 p. 3. OECD Secretary-General Angel Gurría declared in the 07 September 2015 published foreword the following: “Only through joined up action guided by an effective system of global governance will we be able to make the Sustainable Development Goals a break-through success. And that is what this Development Co-operation Report 2015: Making Partnerships Effective Coalitions for Action is all about.”

<sup>18</sup> The French name of OECD is ‘L’Organisation de coopération et de développement économiques’.

<sup>19</sup> Government Report on the Impact and Coherence of Development Policy 2014 p. 38. Also see Department for Development Policy 2012 p. 6; Yle 2 April 2006.

This paper is extremely topical since the new Sustainable Development Goals were recently agreed upon and there is an ongoing discussion on the validity of development cooperation budgeting and control. The discussion has only heated up after the proposal to cut funding. Additionally, the legal dimension of development cooperation and especially its control has not seemingly been researched as much as other dimensions (e.g. economics and program effectiveness).

## 1.2 Research Plan

### 1.2.1 Field of Law

The focus of this thesis are the norms of development cooperation and especially the norms of controlling development cooperation funding. First we need to explore in which field of law the subject operates in. As always, it is prudent to acknowledge that the categorization of legal disciplines does not yield any normative effects. Neither should we believe that fields of law mark any strict fields that law should operate in. Disciplines merely help us organize and navigate different aspects of law and maintain a reasonable view of the subject at hand.

The legal research of statutes connected with development aid is not as comprehensive as many other legal science fields. From a national and ministry-level viewpoint it can be seen as form of public law and more specifically financial administrative law. It could merely be a series of administrative matters and decisions supplemented by institutive constitutional law and financial statutes. At a global scale, development cooperation forms a discipline of its own. Although development cooperation encompasses an infinite amount of actors, layers and instruments, Dann proposes that it can be treated as an independent discipline. Like this thesis, he delimits the scope of his systematization to public funding. Thus, he specifically states the *law of development cooperation* is actually the law of official development assistance (ODA) i.e. the flow of public funds from developed states to the Third World.<sup>20</sup>

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<sup>20</sup> Dann 2013 pp. 13–14.

The control aspect of development cooperation belongs primarily to the legal disciplines of commerce law and financial administrative law. Provisions connected with budgetary control have a distinct feature. They are more closely linked to ideas and concepts from other fields of science like auditing and evaluation. Some of the core functions of certain principles (e.g. sound financial management, true and fair view, and effectiveness) are more easily ascertained with outside help from other fields than legal science. According to Myllymäki, research of the public economy carries in itself traits of three different scientific branches: Politics, economics and law. He states that “the knowledge of politics and economics belong to the virtues of every researcher of public finance law”.<sup>21</sup>

The topic also has some contact surface with human rights obligations since development cooperation is usually funded in order to eradicate poverty, improve health services, ensure access to water, and similar fundamental goals. Nonetheless, this thesis treads without a doubt mostly in the field of financial administrative law. The control of ODA in the Finnish jurisdiction is a composition of administrative decisions and financial duties that are subject to international law and standards.

The paper will expect that the reader has a sufficient level of prior knowledge concerning public law, control and Finnish state budgeting. The substance of the matter at hand will be attacked straightforwardly and without delay by bypassing introduction phases. For example, some of the pieces of the puzzle (e.g. the fundamentals of auditing) will not be dealt with in-depth to conserve resources for the attainment of the true objective.

### 1.2.2 Objective

The objective of this thesis is to organize and describe the legal framework of development cooperation management and especially the control of cooperation cash flows in the Ministry of Foreign Affairs of Finland sector. Development cooperation funding and its control are built upon numerous different legal components, like definitions, prerequisites, processes, principles and decisions. The objective of the thesis is to systematize and interpret the norms that are used

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<sup>21</sup> Myllymäki 2007 p. 12.

to construct the aforementioned framework and components. In other words, this thesis will formalize the Finnish control component of the law of development cooperation.

Development aid law itself can be divided into different components e.g. the obligation to distribute aid, the definition of official development assistance (ODA) and appropriation limits. Control spans a large subject in itself as well. It can consist of e.g. pre-emptive mechanisms (*ex ante*), constant monitoring or after-action evaluation (*ex post*). Modes of control include *inter alia* audits, evaluations, risk assessment and risk response. This paper will explore the legal web connecting the two aforementioned legal norm dimensions (development cooperation and control) and combine them into a coherent legal model.

The budget, development cooperation and control are also subject to general principles of resource management as issued by parliamentary laws (e.g. the State Budget Act 423/1988). Control always measures the target against suitable bench marks and standards. When viewed state-wise, these bench marks and standards are *inter alia* the principles of effectiveness, impact and transparency. If we are to understand control, we must understand how its meters and gauges work. Concordantly, the research question of this thesis can be formulated into the following form:

What are the relevant legal norms concerning the control of the Ministry for Foreign Affairs of Finland's development cooperation appropriations at the state and ministry levels?

The research mission is a descriptive one more than anything. I do not have previous expertise of any kind concerning development cooperation or controlling it. Thus, the research to be carried out will consist of, figuratively speaking, voyaging on dark waters and searching for the correct lighthouses. Instead of trying to comprehend a portioned part of a certain legal structure and establish a condensed interpretative argument, the goal of this paper is to build an interpretation of the legal system surrounding a limited theme (the control of development cooperation).

### 1.2.3 Scope

As Dann points out, the law of development cooperation is the law of ODA. No civilian, private, unlawful or otherwise unofficial fund transfer can be classified as ODA. Thus, only the budget, appropriations and funding decisions delegated to the Ministry for Foreign Affairs

of Finland will be assessed (the so called ODA budget). This essentially means main division of expenditure 24, chapter 30, items 66, 80 and 89<sup>22</sup> of the state budget. Item 50 exists in the chapter, but it has not been granted appropriations in years. Actual development cooperation has currently been appropriated about 597 million euros for the year 2016, while the whole sum of development cooperation operated by the state has been appropriated about 714 million euros.<sup>23</sup> The scope will also be limited to the jurisdiction of Finland. Audits, operations etc. carried out in developing countries will be excluded since the Finnish state has no authority or the power of law over a sovereign state. The thesis' focal point will be Finnish Law and the legal mechanisms that can be placed inside the Finnish system. Despite the aforementioned, international material that has a *legal effect* on Finnish legislation will not be excluded.

Concurrently, the foreign aid of other public bodies, other states, public-private partnerships, non-governmental organizations (NGO), or international organizations will be ignored. Development aid is controlled by multiple overlapping Finnish entities: Parliament, the MFA itself, the National Audit Office of Finland (NAO), the police, the Financial Supervisory Authority, the media, international organizations and NGOs. The thesis will focus on control mechanisms dedicated directly to control like parliamentary budgeting, MFA and its operational units, state agencies and functions (e.g. NAO and the Government's financial controller function). The paper will not focus on a separate part or function of control (e.g. auditing, internal control, evaluation) but on control as a legal duty of the State.

#### 1.2.4 Method

The thesis will utilize legal doctrine as its main method of study i.e. it will examine what the statutes and norms tell us. Van Hoecke has described in his article 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' multiple different disciplines of legal doctrine e.g. the hermeneutic, argumentative, empirical, explanatory and normative disciplines<sup>24</sup>. He concludes that legal doctrine is mainly a hermeneutic discipline with elements of the other traits<sup>25</sup> and that the desired end state of legal doctrine is a legal theory. Van Hoecke defines a theory in law as "a system of coherent, non contradictory assertions, views and concepts

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<sup>22</sup> Item 89 was created in Budget Proposal 2016 as a replacement for item 88.

<sup>23</sup> Ministry of Finance [budjetti.vu.fi]: GP 30/2015 ps: BP for the year 2016, main division 24, chapter 30.

<sup>24</sup> Van Hoecke 2011 pp. 4–11.

<sup>25</sup> *Idem* p. 17.

concerning some legal system or part of it, which are worded in such a way that it is possible to deduct from them testable hypotheses about the existence (validity) and interpretation of legal concepts, rules or principles<sup>26</sup>.”

The hermeneutic discipline gives us that the main research object of legal doctrine is the interpretation of text and literature (e.g. laws and treaties). Interpretation is described as a goal, to which arguments guide us in. Arguments are used in situations where text does not exist like gaps in law (argumentative discipline). According to the empirical discipline, it is the job of legal doctrine to find out what the “legislator really meant”. Empirical data on legal issues can be found through text analysis, logic, field research, statistics etc. Van Hoecke reminds us that legal data and ultimately interpretations cannot be influenced by empirical data, but agrees that legal arguments might be swayed through empirical observations.<sup>27</sup>

According to the explanatory discipline, legal doctrine is about explaining why a rule is valid. Validity may rise from economical, sociological etc. standpoints or through internal logic (such as a higher norm). Finally, the normative discipline gives us that legal doctrine is about describing and systematizing i.e. choosing normatively among values and principles. Van Hoecke writes that the normative discipline is a search for the “better law” by utilizing sources external to law like economy, moral, history or politics. Thus, the normative approach forces us to use empirical data when searching for the “better law” in relation to a set view.<sup>28</sup>

I am not exactly sure if a thesis needs to select one separate discipline from the get-go to support its interpretive direction. Rather, shouldn't the most suitable disciplines be used when facing problems? For example, since the subject at hand contains numerous gaps of law and empty *espaces juridiques*, it is only natural that we argument them with observations from other fields of science. For example, the definitions of control and effectiveness are fundamentally based on auditing and evaluation material and not solely on formal legal sources. On the other hand, we can search for a better law of control through external sources like control reports. Concurrently, as we systematize soft law together with international and parliamentary law, we are searching for the validity of these norms.

On the subject of the empirical discipline, Ekins has summarized and augmented Dworkin's thoughts on the legislature's intent. Ekins points out that Dworkin did not believe in a construct

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<sup>26</sup> Van Hoecke 2011 p. 15.

<sup>27</sup> *Idem* pp. 4–7. Citation on p. 6.

<sup>28</sup> *Idem* pp. 8–11. Citation on p. 10.

called *legislative intent* as the legislature is composed out of numerous legislators (of which some agree with the law and some do not). The legislature is an institution, not a single author of law.<sup>29</sup> Ekins presents in his alternative theory that the legislature does have an intent when enacting laws. Acts are laid out by a majority vote and the laws are formed out of proposals that are jointly agreed upon.<sup>30</sup>

The purpose of the legislature is to make law deliberately and for good reasons, which is to say for the common good. That is the purpose for which legislators act jointly and it is also the purpose that defines the enduring institution of the legislature, which particular legislators join for a time.<sup>31</sup>

In conclusion, shouldn't we strive to see legal norms from multiple viewpoints and not blindly accept them as granted, holy texts of correctness? And consistently, every interpretation or argument should contain a fruit of wisdom or a reasoning (*ratio juris*) as its foundation.

### 1.2.5 Source Material

Normative sources that are in force (*de lege lata*) will form the foundation of this paper. Normative sources are e.g. statutory texts, treaties, general principles of law. Legislative and executive sources of the Republic of Finland, such as domestic law, decrees, regulations and orders shall be mainstay of the thesis, since its focus is the state and ministry level. Nonetheless, we cannot simply ignore European Union legislation, United Nations statutes and other international law, especially in such an international topic as development cooperation. Therefore a reasonable amount of international law shall be incorporated into the thesis e.g. United Nations General Assembly (UNGA) resolutions and primary EU law. Foreign legislation will only be used as an illustrative tool.

Authoritative sources, such as scientific legal writings, shall be kept in a supportive position. Legal literature will be composed from both international and national sources. Sources from

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<sup>29</sup> Ekins 2011 pp. 435–440, 442–445. See e.g. Dworkin 1986 pp. 335–336: “It seemed a metaphysical mistake to take the “intention” of the legislature itself as primary so long as Hermes was in the grip of some mental-state version of the speaker’s meaning theory of legislative intent. So long as we think legislative intention is a matter of what someone has in mind and means to communicate by a vote, we must take as primary the mental states of particular people because institutions do not have minds, and then we must worry about how to consolidate individual intentions into a collective, fictitious intention.”

<sup>30</sup> Ekins 2011 pp. 440–441.

<sup>31</sup> *Idem* p. 441. See Van Hoecke 2011 p. 10 for his idea of “the better law”.

the judicial branch (case law, judgments etc.) are almost non-existent in development cooperation matters (especially when considering state-scale affairs) and therefore they have been excluded from the source material.<sup>32</sup> One major national distinction is the so called Costa Rica-Instrumentarium case<sup>33</sup>, in which a pre-trial investigation and subsequent trial was held after the corrupt use of Finnish development cooperation funds was suspected in Costa Rica. The case will not be utilised in the thesis as a fair analysis of the very complex case would require an analysis chapter of its own.

Most of the applicable Finnish statutes have not been translated into English (for example the Rules of Procedure of the Ministry for Foreign Affairs 550/2008). If no translation produced by the Ministry of Justice was available, then the commercial MOT online dictionary (produced by the Kielikone limited liability company) and the government term bank Valter<sup>34</sup> (produced jointly by Kielikone and the Prime Minister's Office) were used for translating key parts of the statutes into English. The translation guide compiled by the Ministry of Justice was utilized as the basis of legal citing. Thus, for example section 1, subsection 2, paragraph 3 will be abbreviated as 1(2)(3)<sup>35</sup>. English translations of Finnish statutes can be viewed online at Finlex<sup>36</sup>. Please note that even translations by the Ministry of Justice are considered unofficial and only Finnish and Swedish versions are legally binding.

Parliamentary budget material is viewable only in Finnish at the online budget service hosted by the Ministry of Finance<sup>37</sup>. Control-related material also comprises of state laws and decrees (e.g. State Budget Act 423/1988), Ministry of Finance regulations concerning sound budget and appropriation use, and Ministry for Foreign Affairs control documents (e.g. HEL7M0512-1 and HEL7M0621-11).

### 1.2.6 Structure

Three analysis chapters (2, 3 and 4) form the core of the thesis. They have been organized in a hierarchically declining or deductive manner i.e. the first analysis chapter deals with

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<sup>32</sup> See Van Hoecke 2011 pp. 11–12 for more on empirical data used in legal doctrine.

<sup>33</sup> See 2400/R/151/07.

<sup>34</sup> [mot.kielikone.fi/mot/valter/netmot.exe?UI=fi80]

<sup>35</sup> Ministry of Justice 2010 p. 12.

<sup>36</sup> [finlex.fi/en]

<sup>37</sup> [budjetti.vm.fi]



international law and the last analysis chapter mostly explores internal regulations and equivalent legal material. Every analysis chapter will contain a chapter summary and the last main chapter (5) of the thesis will be used to conclude and summarize the research carried out.

Chapter 2 is a framework and background chapter. It will cover the international obligation to maintain development cooperation *de jure* and also explain basic characteristics of aid transfers. The chapter was written to ensure that everyone is on par with the paper's setting. Chapter 3 deals mostly with parliamentary control over the State budget and thus the control of the development cooperation appropriation. Duties set forth by the Constitution and subsequent duties detailed in budget enactments and Ministry of Finance regulations will be showcased. Chapter 4 concerns actual control i.e. the different entities, functions and mechanisms established in order to maintain control at every level and point in administrative operations of development cooperation funding.

The chapters' substance has been compiled in order to satisfy three pragmatic aspects of control: a) why to control, b) what to control and c) how to control. For example, it is hardly rational to lecture about control if we do not know what to control. Controlling land survey assets and rural development programmes of the Ministry of Agriculture and Forestry is vastly different from controlling foreign aid. In a similar sense, it would be foolhardy to research the legal aspect of control if there truly did not exist an obligation to control.

### 1.3 The Position of Soft Law

A monumental quantity of development cooperation law does not actually compromise of binding legal instruments, but of recommendations, consensuses, declarations, action plans and standards. For example, Finland does not have a law regulating foreign aid specifically and at its core, the duty to convey development aid is based on United Nations General Assembly resolutions. International law and development cooperation law is dominated by *soft law*. For example, Cárdenas Castañeda believes that “the primary and supreme source of international law is international practice”<sup>38</sup>. In the world of international law, where no universal legislator exists, the acceptance and consent of the states is more of a common denominator for suitable law instead of hard legislation. *Ergo*, Cárdenas Castañeda calls the formation of international

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<sup>38</sup> Cárdenas Castañeda 2013 p. 358, 395.

law *ascertainment* (defining of law) instead of law making. According to him, today's soft law will be tomorrow's hard law.<sup>39</sup> Chinkin has defined the following characteristics of soft law:

- i) they have been articulated in non-binding form according to traditional modes of law-making
- ii) they contain vague and imprecise terms
- iii) they emanate from bodies lacking international law-making authority
- iv) they are directed to non-States actors whose practice cannot constitute customary international law
- v) they lack any corresponding theory of responsibility
- vi) they are based solely upon voluntary adherence, or rely upon non-judicial means of enforcement<sup>40</sup>

Hasanat states in his dissertation for the University of Lapland that there is no clear answer if soft law creates responsibilities and that there are conflicting views on the legal and binding characters of soft law<sup>41</sup>. In the context of EU law, Ojanen states that while soft law might not be legally binding, it can still have legal effects. For example, soft law can (such as a statement by the Commission) act as interpretive tool for the European Court of Justice and national courts have a duty to follow EU soft law.<sup>42</sup> Therefore, in order to truly understand development cooperation and its control as a legal phenomenon, we must accept soft law as a valid source. But we must also recognize soft law's *quasi*-legal and non-binding state while we use it to interpret and systematize law. For example, a Government Programme is usually understood as a political document<sup>43</sup> and without legal basis. Myllymäki asserts that the Government Programme is exceptionally strong indicator of political will<sup>44</sup>. Control directives and recommendations issued by the State are riddled with material equivalent with soft law. This thesis will treat OECD standards, Government Programmes, formal regulations and similar sources as soft law. Soft law itself will be treated as an acceptable source of legal information that can attribute to legal effects although its impact will be viewed in relation to hard law. But even when taking such a stance, the place of soft law in legal hierarchy must always be scrutinized.

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<sup>39</sup> *Idem* pp. 357, 361–362, 396.

<sup>40</sup> Chinkin 2000 p. 30.

<sup>41</sup> Hasanat 2012 pp. 55–58. For example, the International Court of Justice has opted that “whenever States enter into a commitment, it is a legal one”, see p. 56.

<sup>42</sup> Ojanen 2010 p. 48.

<sup>43</sup> See e.g. Jyränki - Husa 2012 p. 265. Jyränki and Husa state that the Government Programme has become increasingly more important in defining the State Budget.

<sup>44</sup> Myllymäki 2007 p. 5.

## 1.4 Major Definitions

The mechanism or instrument of transferring funds, goods and expertise from developed countries to developing countries is called *development cooperation* in this thesis. Statutes of official European Union and Finnish aid are also called development cooperation. Other common names associated with development cooperation are development assistance, development intervention, technical assistance, international aid, development aid, overseas aid, or foreign aid. Different versions will be used throughout this paper in order to limit repetition. Humanitarian assistance (e.g. the Haiti earthquake crisis of 2010) is a subcategory of development cooperation.

*Official development assistance* (ODA) is development cooperation funding measured by the Organisation for Economic Co-operation and Development's (OECD) Development Assistance Committee (DAC). DAC defines ODA as follows:

Official development assistance is defined as those flows to countries and territories on the DAC List of ODA Recipients and to multilateral development institutions which are:

- i) provided by official agencies, including state and local governments, or by their executive agencies; and
- ii) each transaction of which:
  - a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and
  - b) is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent).<sup>45</sup>

*ODA Flow* is the movement of official development assistance capital from one place to another. In actuality, this means transactions from one bank account to the next or similar exchanges. But transferring the ownership of e.g. machinery to another entity also generates cash flow. Concordantly ODA flow could be called e.g. money flow, resource flow, cash flow, fund flow or capital flow. In this thesis, simply put, ODA flow is a general term for any form of development cooperation funding sent to developing states. Control is aimed at supervising the legality and appropriateness of these flows. OECD separates flows into different subcategories when measuring ODA e.g. Other Official Flows (OOF), private flows, net flow and multilateral outflows<sup>46</sup>. But for the sake of this thesis, ODA flow will be treated as a single entity.

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<sup>45</sup> OECD 2013a p. 7.

<sup>46</sup> See OECD 27 September 2015 for more information.

The *control* of actions spans a great many things. In short, control could be described as keeping the tabs or keeping check of something. Control is management of risks. In financial matters, this means checking that the allocated resources are used efficiently for the task they were assigned to in compliance with the owner's requirements i.e. the resources are flowing correctly. But in the public sector, the objective of control is also to ensure the legality of administrative actions. Synonyms to the concept include words like 'monitoring' and 'supervising', while the word control is predominantly used in auditing and evaluation perspectives. *Contra*, the MFA uses monitoring instead of control<sup>47</sup>. As a general term, control encompasses different instruments, like audit, evaluation, sampling, risk assessment and communications. Control can be roughly divided into *ex ante* (pre-emptive), current (monitoring) and *ex post* (audit and evaluation) phases. Organizationally control can be divided to internal and external control.

For example, EU defines control as follows in the Financial Regulation<sup>48</sup> article (2)(1)(r):

"[C]ontrol" means any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention and detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned. Controls may involve various checks, as well as the implementation of any policies and procedures to achieve the objectives described in the first sentence;

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<sup>47</sup> See [<http://formin.fi/public/default.aspx?nodeid=49317&contentlan=2&culture=en-US>]

<sup>48</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

## 2 Official Development Assistance Flow

### 2.1 Why is Development Cooperation Organized *de jure*?

#### 2.1.1 United Nations – the Legal Tinder

The purpose of this first main analysis chapter is to explore the jurisdictional framework of the thesis and, in order to facilitate that objective, answer two questions:

- 1) Why is capital transferred to developing states *de jure* and
- 2) how are the fund transfers categorized in practice?

To start off the thesis and answer the first question, we shall cover the jurisdictional track of the obligation to organize development cooperation from the top of legal hierarchy to the field level. International aid is a global phenomenon even when legally speaking and it is to be understood as one. Consequently, this chapter shall start from the international organization connecting the world: The United Nations.

Finland has been a member of the United Nations since 14 December 1955<sup>49</sup>. Therefore Finland is subject to UN law and to the resolutions of the General Assembly and the Security Council pursuant to the Charter of the United Nations article 2, paragraph 2:

All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.<sup>50</sup>

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<sup>49</sup> UNGA Resolution 995.

<sup>50</sup> Kolb describes the nature of the paragraph as a “respect of promises (*pacta sunt servanda*)”. The paragraph’s objective is to ensure that international treaties are not “mere scraps of paper”. The term was first used by the German Chancellor Bethmann-Hollweg after Britain declared war on Germany. Kolb also notes that the paragraph is not without limits and its obligations are not absolute. See Kolb 2010 pp. 40–44. Citations on pp. 40 and 41.

Article 2, paragraph 5<sup>51</sup> of the Charter supports UN goals. The global foundation of modern development aid law is laid down in the United Nations General Assembly (UNGA) Resolution 55/2 adopted on 18 September 2000: the Millennium Declaration. The Declaration is a comprehensive tool on multiple development-related subjects and set out development goals for each category. It consists of nine parts: Values and principles; Peace, security and disarmament; Development and poverty eradication; Protecting our common environment; Human rights, democracy and good governance; Protecting the vulnerable; Meeting the special needs of Africa; and Strengthening the United Nations.

The defined goals and targets set out in the resolution were named Millennium Development Goals (table 1). The goals are written out in a declarative-operative manner as is typical of resolutions. For example, paragraph 11 of part III is set as follows: “We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.” The goal is then followed by more detailed targets like paragraph 12 of part III: “We resolve therefore to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty.”

Early on the goals were described as a catalyst and a big push on development aid. They also represented an international consensus and an international political legitimacy on future development policies. The goals had their fair share of criticism: lack of ambition in targets like poverty, hunger and slum dweller life, but also over-ambitiousness in for example the universal education target.<sup>52</sup>

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<sup>51</sup> “All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.”

<sup>52</sup> Langford – Summer – Yamin 2013 pp. 1–3.

Table 1 Millennium Development Goals (MDGs) and targets<sup>53</sup>

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|  |
|--|
| <b>Goal 1 – Eradicate extreme poverty and hunger</b>   |
| <i>Target 1.A:</i> halve the proportion of people whose income is less than \$1 a day (between 1990 and 2015)  |
| <i>Target 1.B:</i> achieve full and productive employment for all, including women and young people  |
| <i>Target 1.C:</i> halve the proportion of people who suffer from hunger (1990–2015)   |
| <b>Goal 2 – Achieve universal primary education</b>  |
| <i>Target 2.A:</i> ensure that, by 2015, all children will be able to complete a full course of primary schooling  |
| <b>Goal 3 – Promote gender equality and empower women</b>  |
| <i>Target 3.A:</i> eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later 2015         |
| <b>Goal 4 – Reduce child mortality</b>   |
| <i>Target 4.A:</i> reduce by two thirds the under-five mortality rate (1990–2015)  |
| <b>Goal 5 – Improve maternal health</b>  |
| <i>Target 5.A:</i> reduce by three-quarters the maternal mortality ratio (1990–2015)   |
| <i>Target 5.B:</i> achieve by 2015, universal access to reproductive health  |
| <b>Goal 6 – Combat HIV/AIDS, malaria and other diseases</b>  |
| <i>Target 6.A:</i> have halved by 2015 and begun to reverse the spread of HIV/AIDS   |
| <i>Target 6.B:</i> achieve by 2010, universal access to treatment for HIV/AIDS for all those who need it   |
| <i>Target 6.C:</i> have halted by 2015 and begun to reverse the incidence of malaria and other major diseases  |
| <b>Goal 7 – Ensure environmental sustainability</b>  |
| <i>Target 7.A:</i> integrate the principles of sustainable development into county policies and programmes and reverse the loss of environmental resources |
| <i>Target 7.B:</i> reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss   |
| <i>Target 7.C:</i> halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation                         |
| <i>Target 7.D:</i> have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers                                      |
| <b>Goal 8 – Develop a global partnership for development</b>   |
| <i>Targets 8.A–8.D:</i> cover aid, trade, debt, landlocked, and small-island States  |
| <i>Target 8.E:</i> in cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries                      |
| <i>Target 8.F:</i> make available the benefits of new technologies, especially information and communications technologies                                 |

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<sup>53</sup> The general layout of the table shown here is widely used by the UN and other international organizations. The source of this exact table is Langford – Summer – Yamin 2013 p. 2. Note that some targets were added or rearranged in 2005 by the UNGA e.g. the inclusion in Target 5.B on reproductive health.

Table 2 Sustainable Development Goals (SDGs)<sup>54</sup>

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|                 |  |
|-----------------|--|
| <b>Goal 1.</b>  | End poverty in all its forms everywhere  |
| <b>Goal 2.</b>  | End hunger, achieve food security and improved nutrition and promote sustainable agriculture   |
| <b>Goal 3.</b>  | Ensure healthy lives and promote well-being for all at all ages  |
| <b>Goal 4.</b>  | Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all   |
| <b>Goal 5.</b>  | Achieve gender equality and empower all women and girls  |
| <b>Goal 6.</b>  | Ensure availability and sustainable management of water and sanitation for all   |
| <b>Goal 7.</b>  | Ensure access to affordable, reliable, sustainable and modern energy for all   |
| <b>Goal 8.</b>  | Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all   |
| <b>Goal 9.</b>  | Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation  |
| <b>Goal 10.</b> | Reduce inequality within and among countries   |
| <b>Goal 11.</b> | Make cities and human settlements inclusive, safe, resilient and sustainable   |
| <b>Goal 12.</b> | Ensure sustainable consumption and production patterns   |
| <b>Goal 13.</b> | Take urgent action to combat climate change and its impacts*   |
| <b>Goal 14.</b> | Conserve and sustainably use the oceans, seas and marine resources for sustainable development   |
| <b>Goal 15.</b> | Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss |
| <b>Goal 16.</b> | Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels            |
| <b>Goal 17.</b> | Strengthen the means of implementation and revitalize the global partnership for sustainable development   |

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\* Acknowledging that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change.

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The new Sustainable Development Goals (SDGs) were unanimously adopted by UNGA on 25 September 2015 as Resolution 70/1 and the new goals shall come into effect on 01 January

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<sup>54</sup> UNGA Resolution 70/1 paragraph 59. The SDGs can be easily viewed at [sustainabledevelopment.un.org/topics].



2016 (paragraph 21). As the Millennium Declaration, the preamble of the SDGs contains noble objectives and starts off with the following words:

This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognise that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.

The SDGs expand the MDGs by multifold (table 2). The SDGs contain 169 individual targets, whereas the MDGs consisted of “only” 21 targets. The MDG targets could be displayed on one page in this thesis, whereas the SDG targets would encompass multiple pages. For example the goal of target 7.1 is to “[b]y 2030, ensure universal access to affordable, reliable and modern energy services” and the goal of target 15.5 is to “[t]ake urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species”. (Resolution 70/1 paragraph 59.)

Another important UN instrument in foreign aid is the so called ‘0.7 % official development assistance (ODA) / gross national income (GNI)’ target. The 0.7 % ODA / GNI target sets out that ODA should amount to 0.7 % of the donor’s GNI pursuant to the UNGA Resolution 2626 of 1970 and its paragraph 43:

In recognition of the special importance of the role which can be fulfilled only by official development assistance, a major part of financial resource transfers to the developing countries should be provided in the form of official development assistance. Each economically advanced country will progressively increase its official development assistance to the developing countries and will exert its best efforts to reach a minimum net amount of 0.7 per cent of its gross national product at market prices by the middle of the Decade.

Resolution 2626 links OECD regulations and standards (especially ODA) to the MDGs. Originally the target was calculated based on the ratio of ODA and GNP. With the advent of UN’s System of National Accounts in 1993, gross national product was exchanged for gross national income<sup>55</sup>. The above cited paragraph is the reason why most developed countries strive to reach the 0.7 % ODA / GNI target.

The Charter of United Nations articles 10 and 12 deem that the UNGA can only issue *recommendations* to Members of the United Nations or to the Security Council within the scope

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<sup>55</sup> OECD 2003 p. III-11; United Nations 1993 p. 201. The System of National Accounts was revised in 2008, but it maintained the ODA/GNI ratio.

of the Charter, any of its organs or on peaceful adjustment of any situation. Therefore, UNGA is not considered a legislator and its resolutions are considered legally non-binding by international law<sup>56</sup>. Even though it does not legally bind Finland to any development cooperation, the Millennium Declaration, Resolution 2626 and Resolution 70/1 (SDGs) can be placed on the highest tier of soft law. Fukuda-Parr and Hulme even describe the MDGs as a super-norm that formed out of mankind's duty to eradicate poverty. This super-norm combines many individual norms into a defined system and its objective is to achieve more than the sum of its parts.<sup>57</sup>

Fukuda-Parr and Hulme note that the average shelf life of a UNGA resolution is mere days i.e. they are superficial instruments. Instead the Millennium Declaration became a central strategy for national governments and international agencies. It also sparked activity in organs like the World Bank and the United States Government. On the other hand the MDGs received some opposition from international NGOs and developing countries for the undemocratic and non-innovative nature of the goals.<sup>58</sup> The European Union closely follows goals and trends set in the Millennium Declaration and has used them to re-engineer national norms<sup>59</sup>. I am confident enough to say that the new SDGs are at least on the same legal level as the MDGs.

The MDGs, the 0.7 % ODA/GNI and the SDGs target can be described as more political (like the super-norm feature) than legal instruments. They do not have binding legal power, but have nonetheless attributed to legal effects. Thus they act as a motor and justification for subsequent EU and national legislative measures regarding development aid. For example, UK was the first G7 nation to institute the 0.7 % ODA/GNI target into national legislation as a duty of the government in March 2015<sup>60</sup>.

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<sup>56</sup> Kolb 2010 p. 124. As Kolb puts it, "[t]he Assembly may discuss and recommend; it may not decide".

<sup>57</sup> Fukuda-Parr – Hulme 2009 p. 5.

<sup>58</sup> *Idem* pp. 14–18. The US increased around \$ 5 billion more per annum in development aid after the Millennium Declaration even though the MDGs were not totally approved by the US Government.

<sup>59</sup> *Idem* pp. 29–30.

<sup>60</sup> The Guardian 9 March 2015; International Development (Official Development Assistance Target) Act 2015 section 1(1): "It is the duty of the Secretary of State to ensure that the target for official development assistance (referred to in this Act as "ODA") to amount to 0.7% of gross national income (in this Act referred to as "the 0.7 % target") is met by the United Kingdom in the year 2015 and each subsequent calendar year."

### 2.1.2 From EU Law to the Ministry for Foreign Affairs

In the context of this thesis, the border between UNGA resolutions and EU law is also the border of soft law and hard law, respectively. In other words, while the before cited UN law does not have a binding legal effect, EU law is binding for the State of Finland. This *supremacy* or *primacy* doctrine of EU law in relation to Member State legislation was laid out in the European Court of Rights case COSTA v. Enel of 1964<sup>61</sup>.

The Treaty on European Union and the Treaty on the Functioning of the European Union are hierarchically the highest governing enactments in terms of the EU. Both treaties were amended recently by the Treaty of Lisbon<sup>62</sup>. Finland has been a member of the EU since 1995<sup>63</sup>. TEU enacts the general provisions on which the EU and its external actions are currently structured upon. Art. 21, para. 1, first subpara. of TEU sets out that in the international scene the EU shall advance *inter alia* the rule of law, respect for human dignity, and respect for the principles of the United Nations Charter and international law.

Point (d) of paragraph 2(1) focuses more on the specific EU development goal of eradicating poverty:

The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations in order to foster the sustainable economic, social and environmental development of developing countries with the primary aim of eradicating poverty.

Similar goals are laid out e.g. for democracy and humanitarian assistance in points (b) and (g) respectively. Whereas TEU is more of a structuring statute with large-scale principles, the TFEU concerns and sets forth actual operations of the EU.

TFEU art. 4(4) lays out that the Union shall have competence to act in the areas of development cooperation and humanitarian assistance, but that the Member States shall have freedom to act in the aforementioned areas. Part Five of TFEU deals with the external action of the EU and sets forth more detailed provisions on cooperation with third countries and humanitarian assistance. First of all, TFEU art. 201 provides us that the external policy shall follow the

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<sup>61</sup> Also see Ojanen 2010 pp. 74–77; Wacker 2009 pp. 82–83.

<sup>62</sup> The Treaty of Lisbon came into effect on 1 December 2009 (see Art. 6(2)) although it was signed on 13 December 2007.

<sup>63</sup> Act Concerning the Accession of the Republic of Finland to the European Union (102/1994) entered into force on 1.1.1995 as laid out in the Decree Concerning the Accession of the Republic of Finland to the European Union (103/1994).

guidelines set by *inter alia* the aforementioned TEU article 21. According to TFEU article 208 paragraphs 1(2) and 2, the Union is committed to development cooperation and UN goals:

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

The EU has been politically committed to the aforementioned goals for a long time. For example, in 2006 the EU stated its commitment in the European Consensus on Development. In May 2015, the Council of the European Union politically reaffirmed its commitment to eradicate poverty and to reach goals set out by the UN and the 0.7 % ODA/GNI target<sup>64</sup>. From the EU law, we move on to the national legislation of Finland.

The Constitution of Finland (731/1999) section 1(3)<sup>65</sup> states that Finland participates in international co-operation for the protection of peace and human rights and for the development of society. Section 1(3) can for example be tied directly to the preamble of UNGA resolution 2626 where the values and aims of international co-operation are reviewed in detail. § 1(3) is also known as the constitutional internationality principle<sup>66</sup>. It came into force as a new provision with the reform of the Constitution on 1 March 2000. The participation of Finland in numerous international organizations (UN, EU, Council of Europe etc.), multi- and bilateral treaties, and international cooperation in general, was deemed so important that it afforded a new provision. The aforementioned objectives were intentionally set “quite open” and they were not meant to be interpreted as exhaustive nor as delimiting.<sup>67</sup>

A vaguer link can be found within chapter 2 since it concerns basic rights and liberties. As is internationally usual, the basic rights and liberties as provided by the Constitution belong to everyone. For example section 6(1) states that everyone is equal before the law and section 7(1) states that everyone has the right to life, personal liberty, integrity and security. Moreover, according to section 22 the public authorities of the State shall guarantee the observance of

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<sup>64</sup> Council of the European Union 2015. See p. 11 especially for ODA commitments.

<sup>65</sup> Please note that Finnish statutes are formed out of sections, subsections and paragraphs.

<sup>66</sup> Jyräki - Husa 2012 pp. 116–117.

<sup>67</sup> GP 1/1998 ps p. 73.

basic rights and liberties and human rights. The same positive obligations can be detected in international conventions and treaties that Finland has ratified, for example the European Convention on Human Rights<sup>68</sup> and the EU's Charter of Fundamental Rights<sup>69</sup>. The Millennium Declaration and Resolution 70/1 contains similar fundamental values. The Government of Finland vouched for a human rights-based approach to development in 2012<sup>70</sup> and Seppänen has argued that "defining development cooperation objectives through human rights is sufficiently ambiguous to be politically acceptable"<sup>71</sup>. Despite the aforementioned, the *espace juridique* between human rights and development cooperation is not clearly set and there does not seem to be an indication of a binding nature.

It can be concluded that the State of Finland and its public authorities are not bound *de jure* by the Constitution to assist everyone in the world in securing their rights. But chapter 2 nevertheless forms a political and moral pledge to uphold effective development cooperation. This is especially the case when interpreted together with section 1(3) of the Constitution, EU enactments, UN law and human rights treaties.

According to sections 67 and 68 of the Constitution, only the most significant and important decisions are made by the Government. Most matters are decided at the Ministry to which the matter belongs to. Also each Ministry, within its proper purview, is responsible for the preparation of matters to be considered by the Government and for the appropriate functioning of administration. More detailed provisions and provisions on the purviews are laid down in the Government Act (175/2003).

Section 7(2) of the Government Act sets forth that further provisions on the organization and operations of ministries can be laid down in a government decree and a ministry decree (rules of procedures). Accordingly, the purview and function of the Ministry for Foreign Affairs of Finland is laid down in the Government Rules of Procedure (GROP, 232/2006). GROP is a subordinate statute (a government decree) of the Government Act. According to section 1 of the GROP, it defines common provisions on the mandate of the ministries. Matters shall be divided up according to the Ministries' mandates as laid down in and the competent Ministry shall handle the issue (§ 10). Section 13 specifically states the mandate of the Ministry for

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<sup>68</sup> Finland is a party of the Convention, see FTS 18–19/1990. Finland is also a signatory of Protocols number 15 and number 16. The aforementioned Protocols are not in force yet.

<sup>69</sup> The Charter of Fundamental Rights is legally binding for Member States of the EU. It has the same legal value as the EU Treaties themselves. See TEU Art 6(1).

<sup>70</sup> Finland's Development Policy Programme 2012 pp. 11–21.

<sup>71</sup> Seppänen 2007 p. 247.

Foreign Affairs. In addition to usual foreign policy tasks e.g. assistance in the coordination of treaties, trade policy and diplomatic missions, the mandate of the MFA also covers development policy and development cooperation pursuant to section 4(1) paragraph 4.

And thus we have paved a simple jurisdictional chain from the UN and the EU to the MFA. Note that the purpose of chapter 2.1 was only to view the obligatory chain from the global level to the MFA. The budgetary process, financial management and the functions of the MFA will be defined more in chapters 3 and 4. But next we will review how development cooperation is actually defined internationally as a transfer.

## 2.2 How is Development Cooperation Classified in Practice?

### 2.2.1 Role of the OECD in Shaping Foreign Aid

If the UN is the umbrella organization for the legal and political drive in development cooperation, then OECD can be described as the umbrella of foreign aid structuring, standardization and statistics. OECD was formed by the Convention on the Organisation for Economic Co-operation and Development in 1960. Finland has been a member of the Convention since 1969<sup>72</sup>. According to Article 1 of the Convention, the main aims of the OECD are

- (a) to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and to contribute to the development of the world economy;
- (b) to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- (c) to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

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<sup>72</sup> OECD 28 August 2015.

OECD organizes the High Level Fora on Aid Effectiveness in which multiple agreements linking and conforming aid goals have been signed by majority of the world's states. Finland adheres to the agreements of the aforementioned Fora<sup>73</sup>. The three latest declarations are the Paris Declaration on Aid Effectiveness of 2005, Accra Agenda for Action of 2008 and the Busan Partnership for Effective Development Co-Operation Agreement of 2011 at the second, third and fourth Forum respectively. As the name of the Fora implies, these declarations set in motion different principles that aim to provide more effective development cooperation. For example, the Busan Partnership lays out two principles: 1) ownership of development priorities by developing countries and 2) transparency and accountability to beneficiaries, citizens and organisations (paragraph 11). The declarations also contribute to e.g. development cooperation evaluation standards.

The OECD organ responsible for development aid matters is the Development Assistance Committee (DAC). The Committee was created in 1960 to oversee the development sector of OECD. DAC is a part of OECD's organization and its mandate for the period 2010–2015 is as follows:

The overarching objective of the DAC is to promote development co-operation and other policies so as to contribute to sustainable development, including pro-poor economic growth, poverty reduction, improvement of living standards in developing countries, and to a future in which no country will depend on aid.<sup>74</sup>

OECD and DAC are the *de facto* organizers of global development cooperation. Finland is member of DAC as well as the OECD. While political decisions concerning foreign aid are made at the UN, DAC guides, standardizes and evaluates data & information concerning aid among donor countries and entities. DAC, so to speak, upholds control on global development assistance.<sup>75</sup>

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<sup>73</sup> See e.g. Ministry of Finance [budjetti.vm.fi]: Consolidated BP for the year 2015, main division 24, chapter 30, p. 2. Retrieved 06 September 2015.

<sup>74</sup> OECD 2010b p. 2–3. Specific goals of DAC are included in the resolution of the council e.g. “a) monitor, assess, report, and promote the provision of resources that support sustainable development, as specified above, by collecting and analysing data and information on ODA and other official and private flows” and “d) analyse and help shape the rapidly evolving global development architecture to optimise development results.”

<sup>75</sup> Development Co-operation Directorate (DCD) provides technical assistance and support to DAC. DCD e.g. monitors aid statistics and performs evaluations of development programmes and aid effectiveness. See [www.oecd.org/dac/developmentco-operationdirectoratedcd.htm].

## 2.2.2 Categorization of Official Development Assistance

Legal provisions do not give us a clear view on how a development cooperation process actually behaves e.g. how much money is granted, on what region is it focused on, what specific projects it will support, how will the money be transferred and how will the aid be monitored. If we are to know what the law of ODA is, then we must know what ODA flows are. This is especially important from a control perspective since you cannot control what you do not know. Finland also has the obligation to meet the 0.7 % ODA/GNI goal and ODA does not suddenly emerge by itself from State accounting. It must be categorized, accounted and submitted according to OECD specifications.

Development cooperation flow categorization can be explored through OECD standards. Funded projects and programmes are essentially classified with DAC codes used in the OECDs Creditor Reporting System (CRS). The CRS is a statistical framework under which data is gathered on multiple parameters from official development assistance (ODA) flow. Since DAC maintains statistical data with CRS and evaluates development cooperation at a global level, it is rational to classify development aid projects with their framework.<sup>76</sup> The MFA's case management system houses data in similar fashion according to the DAC classifications<sup>77</sup>. The classification represented below is a streamlined one, but yet it gives a basic understanding of a development cooperation funding's dimensions<sup>78</sup>. The categorization here is divided into five categories.

The first and foremost category is the geographical location of the *recipient* i.e. the targeted country or region. Not all development aid flow is targeted at a single country since some harmful phenomena do not conform to borders.<sup>79</sup> For example, Finland decided to fund the World Food Programme counteraction against Ebola and coinciding food aid with 1 000 000 € in December 2014. The targeted region of the project was laid out as Africa.<sup>80</sup> On the other

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<sup>76</sup> More information available at [[www.oecd.org/dac/stats](http://www.oecd.org/dac/stats)] on DACs statistical methodology.

<sup>77</sup> See [[formin.fi/public/default.aspx?nodeid=48019&contentlan=2&culture=en-US](http://formin.fi/public/default.aspx?nodeid=48019&contentlan=2&culture=en-US)] where info on funding decisions is uploaded publicly.

<sup>78</sup> The DAC code list contains more parameters than presented here. For example, type of finance and type of flow are also measured. The parameters selected for this thesis are based upon the author's discretion of a true and fair view.

<sup>79</sup> OECD 2013b p. 55–56. The geographical distribution of ODA flows for the year 2015 can be viewed at [[www.oecd-ilibrary.org/development/geographical-distribution-of-financial-flows-to-developing-countries-2015\\_fin\\_flows\\_dev-2015-en-fr](http://www.oecd-ilibrary.org/development/geographical-distribution-of-financial-flows-to-developing-countries-2015_fin_flows_dev-2015-en-fr)]. More flow data can be found at [[www.aidflows.org](http://www.aidflows.org)].

<sup>80</sup> UHA2014-051955.



hand, in February 2015 a decision was made to fund the training of civil servants and journalists solely in Somalia with 69 000 €<sup>81</sup>.

The funds might be transferred to the recipient government directly, to an NGO<sup>82</sup>, a private public partnership<sup>83</sup> (PPP), a UN body, or any other multilateral organization, university, research institute, fund etc. The DAC *channel of delivery* defines the funding channel. DAC also separates between bilateral or multilateral funding i.e. if the funds are channelled directly between governments or if the funding is contributed from the core government to a multilateral organization.<sup>84</sup>

For example, in May 2015 the MFA decided to fund an environment and bio-diversity program with 3 026 000 euros. The funds were transferred to the Asian Development Bank and target region was labelled as the Mekong-river.<sup>85</sup>

*Type of aid* determines how the recipient will be able to use funds granted by the donor. The aid type can be divided into six main classes: A) budget support, B) core contributions and pooled programmes and funds, C) project-type interventions, D) experts and other technical assistance and E) scholarships and student costs in donor countries<sup>86</sup>. Budget support covers unearmarked transfers to the recipient's treasury. It can focus either on general macroeconomic reforms or be specified to a single sector. According to the DAC manual "[b]udget support is a method of financing a recipient country's budget through a transfer of resources from an external financing agency to the recipient government's national treasury"<sup>87</sup>.

Class B) is defined as follows: "-- the donor relinquishes the exclusive control of its funds by sharing the responsibility with other stakeholders (other donors, NGOs, multilateral institutions, Public Private Partnerships)". The funds are thus transferred to a third party, to an account operated jointly by third parties, to a specific programme operated by a third party etc. The key difference from budget support is that the funds are under the control of a third organization instead of the recipient state.<sup>88</sup>

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<sup>81</sup> UHA2014-047574.

<sup>82</sup> For example Doctors without Borders ('Médecins Sans Frontières' in French) or International Trust Fund for Demining and Mine Victims Assistance.

<sup>83</sup> For example Microfinance Enhancement Facility.

<sup>84</sup> OECD 2013b p. 57–59.

<sup>85</sup> UHA2015-015563.

<sup>86</sup> OECD 2013b p. 63–68. One additional category exists, but it was omitted from the thesis: G) administration costs not included elsewhere.

<sup>87</sup> *Idem* p. 63.

<sup>88</sup> OECD 2013b pp. 63–64.

Class C) pinpoints the target even more. Whereas core contributions might be transferred for a specific theme, project-type interventions are intended to fund a detailed project with deliberate inputs, activities, outputs and fixed performance goals. Class E) consists of sending consultants, teachers, researchers, interns and so on to the recipient country. Class G) includes supporting the education of recipient country nationals with grant funding.<sup>89</sup> For example, the MFA is currently supporting multiple project-type interventions with 2 650 000 € in Mazar-e-Sharif of Afghanistan. The projects include *inter alia* UNICEF's WASH project targeting water and sanitation issues, and the Justice for Women project focusing on women's rights and participation in legal affairs.<sup>90</sup>

The fourth category is the *sector of destination*<sup>91</sup> as set out by the DAC purpose codes. Sector of destination responds to the question "which specific area of the recipient's economic and social structure is the transfer intended to foster"<sup>92</sup>. DAC purpose codes cover all the sectors that aid can be targeted to e.g. agriculture, communication, education, health and tourism. More accurate sector examples include, but are not limited to: child soldiers (prevention and demobilisation), basic nutrition, debt forgiveness, fertilizer minerals, health personnel development, human rights, livestock, malaria control and teacher training. The sectors are self-explanatory, but a more detailed description of, for example, the basic nutrition (code 12240) sector aid according to the CRS code list is as follows:<sup>93</sup>

Direct feeding programmes (maternal feeding, breastfeeding and weaning foods, child feeding, school feeding); determination of micro-nutrient deficiencies; provision of vitamin A, iodine, iron etc.; monitoring of nutritional status; nutrition and food hygiene education; household food security<sup>94</sup>.

The aforementioned funding decision to train Somalian civil servants and journalists was categorized by the purpose codes as 30 % democratic participation and civil society, 40 % media and free flow of information, and 30 % human rights. Whereas the aforementioned environment and bio-diversity program at Mekong-river was coded as 50 % environmental policy and administrative management, and 50 % bio-diversity.

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<sup>89</sup> *Idem* pp. 65–67.

<sup>90</sup> UHA2014-046792.

<sup>91</sup> MFA uses the phrase 'field of activity' instead.

<sup>92</sup> OECD 2013b p. 69.

<sup>93</sup> *Idem* p. 69–94.

<sup>94</sup> *Idem* p. 73.

The fifth and last category are the *markers*. The markers determine the descriptive level of involvement on various policy objectives e.g. biodiversity, climate change - adaptation and gender equality. They are used *inter alia* to tie development cooperation to UN goals like the MDGs and the Rio Conventions<sup>95</sup>. A marker can be labelled by the donor country as a principal objective, a significant objective or not targeted according to how the aid was intended to be used to achieve the policy outcome.<sup>96</sup>

The aforementioned categorization is comprised of multiple overlapping classifications, but yet it simply answers basic questions related to funds e.g. to where, to whom, by whom, how and to which sector. The actual transfer process of development cooperation funds itself is relatively simple. Funds might flow to a recipient country through e.g. a bank transfer from the donor country's treasury to the recipient country's treasury or to the bank account of an NGO project<sup>97</sup>. Equipment can be sent via convoys or shipping lanes while experts can be flown to the destination through air flights. A debt relief agreement can be signed between the parties and the debt removed from the Finnish State's central bookkeeping.

## 2.3 Chapter Summary

Jurisdictionally, development cooperation can be understood as a relatively simple chain of commands: An "order" to organize development cooperation arrives down the jurisdictional track from the combined legal base of the UN, EU and national legislation to the MFA (the '*de jure*' part of flow). At this point, the "order" transforms into a more technical obligation. The order is processed and funds are actually transferred to a developing state according to OECD standards and categorizations (the '*in practice*' part of flow). Before the funds reach the developing state, it has to satisfy multiple prerequisites e.g. recipient, channel of delivery and sector of destination. Thus resources (machinery, cash, personnel) flow from the start point to

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<sup>95</sup> United Nations Convention on Biological Diversity, United Nations Framework Convention on Climate Change and United Nations Convention to Combat Desertification.

<sup>96</sup> OECD 2013c p. 34–35.

<sup>97</sup> The State Treasury is in charge of State's financial management, central bookkeeping and payment transfer activities. See [www.statetreasury.fi]. But actually, state capital flows through normal bank accounts. The current main payment transaction broker for the State is Pohjola Pankki Oyj. See [www.op.fi/op?cid=151672936&srcpl=4] Retrieved 20 September 2015.

the end point i.e. funds are transferred from developed countries capital to developing countries capital and development cooperation is generated (figure 1).

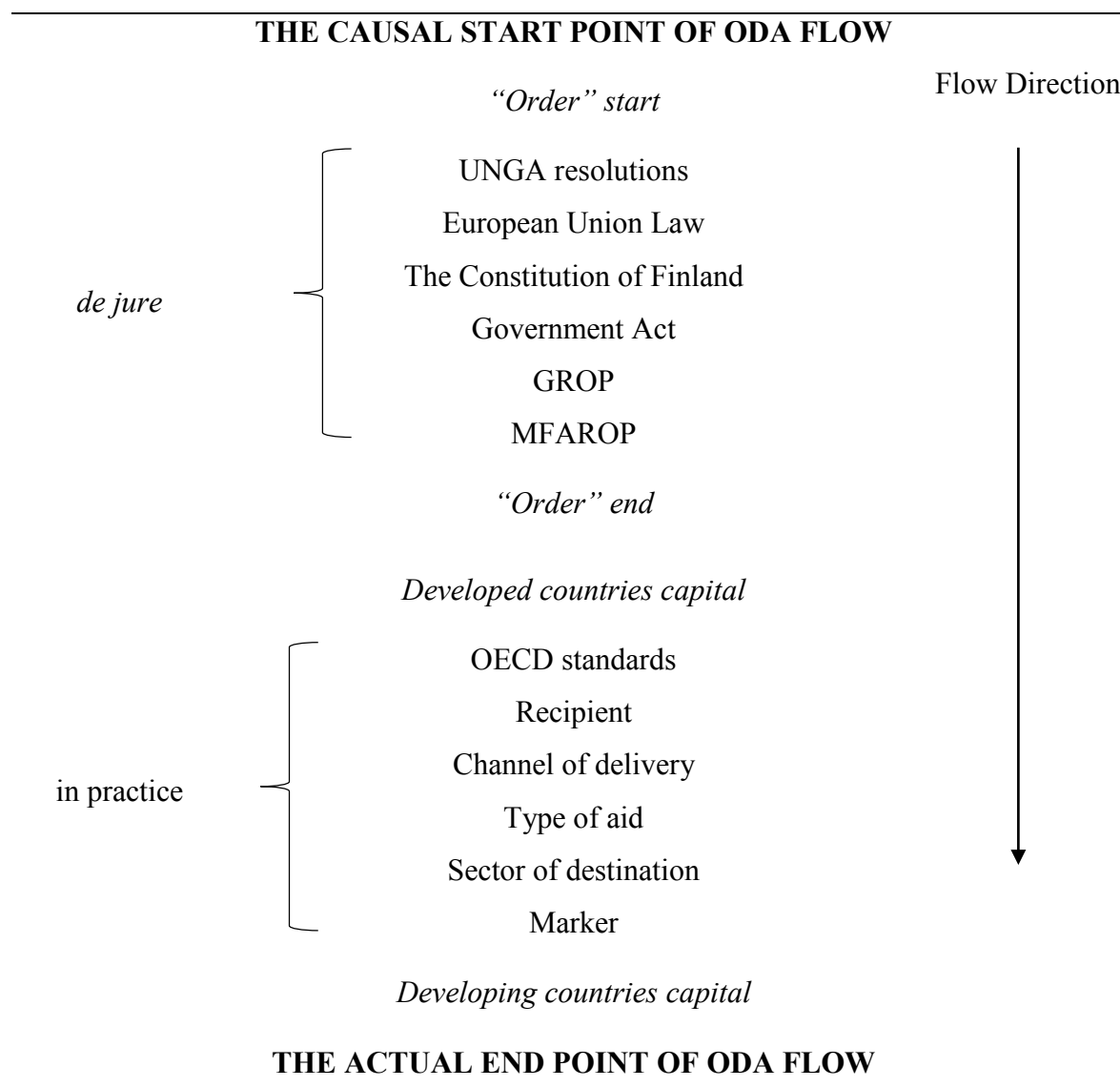


Figure 1 ODA Flow in Development Cooperation

The figure and the overall concept in this chapter is to be seen as an illustrative tool rather than a rigid construct. For example, resources do not factually flow at the legal level, but the UN nevertheless represents the causal starting point of the eventual flow. If the aforementioned UN General Assembly resolutions did not exist, we might not see any development aid flow to developing states. Also the ‘*de jure*’ and ‘*in practice*’ borders form a thin red line. Nevertheless, the chapter and the figure provide us with a clear, albeit shallow, vision of why and how foreign aid is transferred from developed nations to the Third World.

## 3 Financial Administrative Law of Development Cooperation

### 3.1 The State Budget

#### 3.1.1 Constitutional Principles and the Composition of the State Budget

This chapter will focus on systematizing the relevant financial administrative law statutes together with development cooperation. In other words, this chapter will answer two integral questions:

- 1) How is the development cooperation budget prepared and
- 2) how should State entities follow the budget?

Parliament of Finland has full of authority of central government finances. This financial power comprises of the budgetary, fiscal and control powers of central government finances<sup>98</sup>. Section 83(1) of the Constitution states that Parliament shall decide on the state budget<sup>99</sup> i.e. the Government proposes the annual State budget which Parliament approves. The execution of the budget falls into the Government's jurisdiction, but Parliament has *ex post* control of the budget after it has been approved.<sup>100</sup> On the other hand, Jyränki and Husa believe that the true budgetary power of Parliament is quite limited, since the budget process is *de facto* led by the Government and the budget is drafted according to Government specifications<sup>101</sup>.

According to Myllymäki, Jyränki, Husa and Wacker, the Constitution contains four pertinent budgetary principles. They are especially important in securing the budgetary power of Parliament:

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<sup>98</sup> The State Budget can be divided into on-budget activities and off-budget activities. Development cooperation is a part of the on-budget activities. Off-budget activities include e.g. Yleisradio Oy, Solidium Oy and off-budget funds. The revenues and expenditures of off-budget activities was estimated to amount to about 5.4 billion euros. See GP 131/2014 ps Y72.

<sup>99</sup> See Wacker 2009 pp. 40–44 for more information on parliamentary budget power.

<sup>100</sup> Jyränki – Husa 2012 p. 259; Wacker 2009 pp. 38–39.

<sup>101</sup> Jyränki – Husa 2012 p. 266.

- 1) The *completeness* of the budget gives us that the budget shall contain all of the State's revenues and expenditures with minor exceptions (§ 84(1)). The aim of the budget completeness is to provide a truthful and complete view of the budget.
- 2) According to the *annuality* principle, the budget shall be laid out for a period of one financial year (§ 83(1)). It ensures that Parliament is able to cope with fast and sudden changes in the economic atmosphere.
- 3) The budget shall be compiled by *gross budgeting* in order to uphold the budget as full and as detailed as possible (§ 84(1)). In short, gross budgeting means that the revenues and expenditures are not added to each other, but kept as independent measures. In some minor cases, net budgeting (where only the sum of the revenues and expenditures is indicated) can be utilized.
- 4) The budget shall be *balanced* i.e. the revenues of the State have to cover and fulfill the expenditures of the State (§ 84(2)).<sup>102</sup>

Jyränki and Husa have also identified a fifth principle: *Openness* of the budget. It indicates that the tables, justifications and similar information of the budget are available to the public for scrutiny (§ 83(1)).<sup>103</sup> On the other hand, Myllymäki thinks that the openness principle is more of administrative principle than a financial one and that it has no special attributes when connected to the budget<sup>104</sup>.

The State Budget is not an act in a normative sense. It is published in a different series than acts, it is only in force for a year and the President has no power over the budget.<sup>105</sup> The budget grants appropriations to State entities. Section 85(1) of the Constitution indicates that appropriations are taken up in the budget as fixed appropriations, estimated appropriations or transferable appropriations. Fixed appropriations cannot be exceeded or transferred without approval by an act, while estimated and transferable appropriations can.<sup>106</sup> Jyränki and Husa define that in addition to granting the power to use State resources, appropriations set a duty to fulfill the desire of Parliament as set by the Budget. They continue, that if the objective of Parliament could be attained much more efficiently and with lower costs, then the entity would

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<sup>102</sup> Myllymäki 2007 pp. 58–63; Jyränki – Husa 2012 pp. 266–267; Wacker 2009 pp. 52–55.

<sup>103</sup> Jyränki – Husa 2012 p. 267. The openness principle can additionally be derived from § 9 of the Act on the Openness of Government Activities 621/1999.

<sup>104</sup> Myllymäki 2007 p. 58.

<sup>105</sup> *Idem* p. 78.

<sup>106</sup> *Idem* p. 74–76 on appropriation varieties.

be obliged to fulfill the duty in such a manner.<sup>107</sup> Wacker raises several different missions of the Budget of which the legal, the administrative and the political mission will be displayed here. According to the legal mission, the Budget is a conduit for Parliament to relay its legal limits to the Government and other relevant authorities. The administrative mission states that the budget is an administrative tool that sets financial resources and limits for the administration. The budget is a guidance tool with which Parliament can distribute funds to different sectors of the society in accordance with its policy (political mission).<sup>108</sup>

Technically, the budget is a table of appropriated revenues and expenditures that are classified into administrative sectors (e.g. Ministry of Labor, Ministry of Education) according to sections 5 and 6 of the State Budget Act 423/1988 (SBA). Inside the sectors, revenues and expenditures are classified even further according to the organization and the type or nature of the cash flow. Both cash flow types are classified into three levels e.g. expenditures are hierarchically classified into main divisions, chapters and items.<sup>109</sup> Finally, the budget shall include *budget justifications* that are approved by Parliament (SBA § 8). Justifications may also contain an allocation plan which assesses how the expenditure item will be distributed between various purposes (SBA § 9).

The development cooperation budget is a normal part of the constitutional principles and budgetary guidelines set here. The development cooperation budget is classified under the Ministry for Foreign Affairs (MFA) and approved by Parliament. Although the aforementioned principles and guidelines are important in upholding a lawful and expedient budget, they are still relatively far away from actual development cooperation budgeting maintained at the Ministry level. Thus, the State budget process will be assessed more insightfully.

### 3.1.2 Preparing the State Budget

State Budget Decree 1243/1992 (SBD) defines the actual preparation and utilization of the budget more clearly than the Constitution or the State Budget Act. It contains numerous budget-technical provisions<sup>110</sup> that are too precise and case-confined to be of use in accordance with

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<sup>107</sup> Jyrnäki – Husa 2012 p. 269. Also see Wacker 2009 pp. 46–52 for the normative status of the Budget.

<sup>108</sup> Wacker 2009 p. 48.

<sup>109</sup> Also see Myllymäki 2007 pp. 63–66.

<sup>110</sup> Like § 3b of the SBA, which is titled ‘Inclusion of a surplus or a deficit in the State annual accounts in the State budget’.

the objective of the thesis. Instead, we will focus on provisions that provide general rules, obligations and standards for financial management rather than technical or pure accounting norms. This chapter is also intended to give an overview of State budgeting to the reader and not to pry into every minor detail.

The State Budget is prepared according to the doctrine of ‘budgeting according to spending limits’ or ‘framework budgeting’<sup>111</sup>, i.e. the Government presents their political desires in the Government Programme, which is then transformed into State budgets. The Government Programme sets rough spending limits or frameworks for the different State sectors in which they have to operate within<sup>112</sup>. The different government agencies and administrative sectors (i.e. Ministries) then propose their budgets inside the spending limits or frameworks from the ground up till they reach the Ministry of Finance pursuant to section 1 of State Budget Decree:

Preparation of the State budget shall comprise the following phases:

1. drawing up framework proposals for central government finances and a Government decision on the framework for central government finances,
2. drawing up budget proposals for government agencies,
3. drawing up budget proposals for the various administrative sectors and other budget proposals,
4. drawing up a Ministry of Finance Budget Proposal to be submitted to Parliament and
5. discussion of the proposal in a plenary session of the Government.

Finally, the Budget Proposal (BP) is submitted to Parliament, which then decides on it. An admitted BP becomes the State Budget. The connection between the Government Programme and budgeting can be found within section 1b(4) of the State Budget Decree *infra*.

Proposals for spending limits in central government finances, including the grounds therefore, and budget proposals including the grounds therefore, must be drawn up in compliance with the deadlines and other regulations set by the Government and the Ministry of Finance.

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<sup>111</sup> ‘Budgeting according to spending limits’ is the official term according to the government termbank Valter while ‘framework budgeting’ is a direct translation by the author.

<sup>112</sup> Myllymäki 2007 pp. 46–48.



As a supplement to the annual BPs, Ministries are also to prepare for the future when planning their financial capabilities:

*Operational and financial planning*

Ministries shall plan the public impact<sup>113</sup> of their area of responsibility and the effectiveness of operations and operational performance in their sector several years ahead. [--] (SBA § 12(1).)<sup>114</sup>

The aim of SBA section 12(1) is to strengthen the impact, financial efficiency and effectiveness of the State. According to operational and financial planning, Ministries are obliged to create plans of their operations for years in advance.<sup>115</sup> Section 12 entered into force in 2004<sup>116</sup> through GP (Government Proposal) 56/2003 ps (parliamentary session) and was slightly modified (e.g. public impact was added) in 2010<sup>117</sup>. The main objective of GP 56/2003 ps was to overhaul the State Budget statutes and sharpen *performance guidance* as an essential strategy of central government finances<sup>118</sup>. Interestingly, operational and financial planning was partially indicated as useless and redundant in GP 202/2009 ps<sup>119</sup>.

According to Myllymäki, the normative status of section 12 and especially its binding effect are unclear. Myllymäki explores section 12 from an administrative view and states that it sets a public duty for State entities to plan and the objectives to plan for. But in what regard does section 12 set a binding obligation to obey the plan? He concludes that it would be irrational if a plan would be bind an organization too tightly amidst ever-changing economic atmospheres as the responsiveness of a plan is one of its main characteristics. Even though a faultily planned plan could be against the wishes of the Government, the plans itself do not currently hold any legal binding effect.<sup>120</sup> This does not of course mean that planning does not have a legal effect as it most surely usually is finalized as a budget proposal. Section 8 of the State Budget Decree lays out the purposes of SBA § 12 further:

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<sup>113</sup> ‘Yhteiskunnallinen vaikuttavuus’ in Finnish. Public impact could additionally be understood as e.g. public outcome or civic impact.

<sup>114</sup> Translation by the author as this particular section has not yet been translated by the Ministry of Justice.

<sup>115</sup> GP 56/2003 ps p. 59; Ministry of Finance 2005 pp. 17–22.

<sup>116</sup> Act 1216/2003.

<sup>117</sup> Act 1096/2009.

<sup>118</sup> GP 56/2013 ps p. 37–38.

<sup>119</sup> GP 202/2009 ps p. 7.

<sup>120</sup> Myllymäki 2007 pp. 50–53.

The purpose of operational and financial planning is:

- 1) to support performance in government activities and finances;
- 2) to provide grounds for preparation of the framework for central government finances and for the annual central government budget;
- 3) to provide grounds for effectiveness in the policy sectors of the ministries and in the managing and steering of government agencies and likewise in setting performance targets.

The operational and financial planning of the Ministry for Foreign Affairs (MFA) is performed at the Financial Unit according to the MFAs internal Financial Regulation<sup>121</sup>.

## 3.2 Financial Duties of the Ministry for Foreign Affairs

### 3.2.1 Adhering to the State Budget – Performance Guidance

The Ministry of Finance created the Manual of Performance Guidance in 2005 to systematize performance guide at an operational level in accordance with the parliamentary authorization of SBA section 26 subsection 3<sup>122</sup> and SBD section 74<sup>123</sup>. The Manual ties itself into numerous State budgeting provisions. For example, according to State Budget Decree section 11, the ministry shall *inter alia* approve the most important targets for *effectiveness* in the policy sector of the ministry and for the *operational performance* of the administrative sector and of its most important government agencies. The Manual reminds us of GP 56/2003 ps as the desire of Parliament to sharpen the performance guidance of State entities. The Manual also refers to SBD section 10(3) in that the operational and financial plans are to be prepared in compliance with the regulations issued by the Government and the Ministry of.<sup>124</sup>

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<sup>121</sup> Financial Unit 2015 pp. 7–13.

<sup>122</sup> “On those matters which are governed by decree, stipulations and instructions may also be issued by decision of the Ministry of Finance and in the standing orders for government agencies.”

<sup>123</sup> “Further provisions on the application of this Decree will be issued as necessary by the Ministry of Finance.”

<sup>124</sup> Ministry of Finance 2005 p. 17 and p. 34.

Although it might not be tightly legally binding, the Manual could be seen as extremely specific soft law or a technical norm that creates legal effects (budgetary decisions). This is especially the case when considering how Government Programmes have a strong legal effect in State budgeting. The Ministry of Finance also issues regulations<sup>125</sup>, but the Manual has not been labelled as one. Yet it seems to have legitimacy in budgetary affairs of the ministry level. Myllymäki thinks that the SBA and SBD do not provide a clear (legal) definition of what the State truly wants. He even inserts performance guidance as a concept into a combined dimension of politics, economics and law<sup>126</sup>. *Ergo*, this seems to be the point when the topic of the thesis starts to yet again venture outside fundamental legal sources and more into the world of auditing and evaluation. In spite of this, soft law and technical norms can be included in the category of acceptable or weakly obliging legal sources.

The State Budget performance guidance is made out of three different elements: Effectiveness of operations, public impact and operational performance. Effectiveness is composed of public impact and operational performance<sup>127</sup>. According to effectiveness, Ministries shall plan and commit their operations in an effective manner i.e. as rationally as possible. For example, Meklin says that effectiveness simply means “doing things the right way”<sup>128</sup>.

Public impact demands that public funds are used to achieve a positive outcome on the society in the long run. For example, a hospital is intended to cure diseases and help to populace in order to attain a better life. Operational performance states that Ministries shall use their resources as efficiently and economically as possible i.e. they shall produce more outputs with less inputs.<sup>129</sup>

Figure 2 illustrates the aforementioned terms in the input-output model. The model is widely used to describe the components of any flow or process. Inputs are e.g. hospital staff, hospital equipment, government buildings, firefighters, public schooling etc. Outputs are the immediate results of the process like treated patients, firefighting missions and schooled adolescents. Outcomes are the long term results of the outputs e.g. a citizen that has been cured and is able to work again, a government building still working despite the risk of fire, and an educated

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<sup>125</sup> See eg. Ministry of Finance 2011: Regulation on Operational and Financial Planning and on the Compilation of Draft Spending Limits and Budgets.

<sup>126</sup> Myllymäki 2007 pp. 105–108.

<sup>127</sup> *Idem* p. 107.

<sup>128</sup> Meklin 2009 pp. 35–40.

<sup>129</sup> See e.g. Report of Finance Committee 30/2003 ps p. 3.

citizen working on behalf of the public. The main difference between outputs and outcomes is the time span.<sup>130</sup>

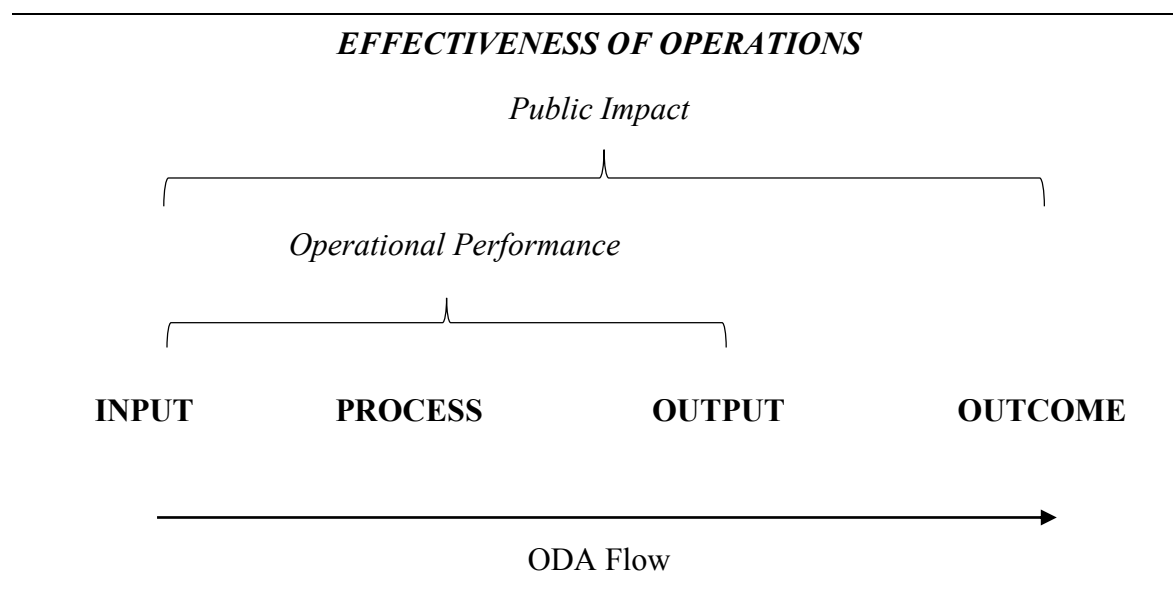


Figure 2 Input-Output Model in Relation to Performance Guidance<sup>131</sup>

Thus, public impact is the relation between inputs and outcomes while operational performance is the relation between inputs and outputs. When working effectively, ministries produce more outputs and outcomes of better quality with less input. This network forms the effectiveness of operations.

The concepts of effectiveness, efficiency, input-output model etc. are a huge research field of their own right in auditing and evaluation<sup>132</sup>. A more detailed exploration of the aforementioned terms will be left out since the paper's subject is first and foremost a legal one. But it is safe to say, that they do not by any means form a clear financial duty for the different entities of the State.

The State Budget Act also requires that on-budget entities provide the Parliament and the public a true and fair view of their financial capabilities and appropriation usage:

In their annual accounts and reports on operations compiled in order to implement accountability, government agencies shall provide true and fair information on their compliance with the budget,

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<sup>130</sup> See e.g. Myllymäki 2007 p. 135.

<sup>131</sup> Work of the author. See Ministry of Finance 2005 p. 59; McDavid – Huse – Hawthorn 2013 p. 19; Meklin 2009 p. 36 and p. 46 for similar figures.

<sup>132</sup> See e.g. Meklin 2009 and McDavid – Huse – Hawthorn 2013 for more information.

their revenues and expenditure, their financial position and their operational performance (*true and fair view*). (SBA § 21(1).)

The concept of true and fair view is an integral part of bookkeeping and thus of control. True view requires that the information is factually correct i.e. it does not contain essential mistakes. Fair view requires that the information covers the entity's operational and financial data completely.<sup>133</sup> The argument is quite rational: If the accounts of a state entity would not contain enough correct information, then the entity could not be truthfully and reasonably monitored. True and fair view is an accounting norm (see Accounting Act 1336/1997). In the Ministry for Foreign Affairs, it is the duty of the Financial Unit to record financial transactions and compile the budgetary year's final accounts. One of the tasks of an audit is in all simplicity, to assess if there exists a reasonable assurance that the documents of the entity in question provide a true and fair view to the stakeholder<sup>134</sup>. In other words, if the stakeholder (in this case, the Parliament or the people) can trust the financial documentation and if the documentation truly gives us a glimpse of the entity's financial capabilities<sup>135</sup>.

The Financial Regulation of the EU<sup>136</sup> does not have a direct effect on the State Budget since it only applies to EU budgeting (art. 1). Nevertheless, it is worthwhile to bring out the comparable EU definitions for operational performance (the principles of economy and efficiency combined) and effectiveness of operations (the principle of effectiveness) as they provide an extra legal source for the financial terms in question. These subprinciples together form the EUs principle of sound financial management:

The principle of economy requires that the resources used by the institution in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results. (Article 30(2).)

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<sup>133</sup> GP 56/2013 ps p. 62.

<sup>134</sup> See e.g. National Audit Office of Finland 2010 p. 15.

<sup>135</sup> Financial Unit 2015 pp. 32–37.

<sup>136</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Un-ion and repealing Council Regulation (EC, Euratom) No 1605/2002.

Other norms in the State Budget Act that contribute to effective control include the obligations to arrange economic and secure cash management (§ 13), to uphold good bookkeeping practice (§ 15) and to arrange accounting of performance and other system in order to monitor operating costs and operative performance (§ 16). SBD chapter 8 lays out the provisions for preparing final accounts (activity report, budget outturn statement, income and expenditure statement, and appendix information) of the central government.

### 3.2.2 The Development Cooperation Appropriation

Next will be a short presentation of the development cooperation appropriation (ODA budget) in the current and following year as well as the 2010s based on State financing and OECD statistics. The displacement of several charts might be odd in a legal thesis, but the numbers are imperative for any controller, auditor or evaluator. It is next to impossible to discern the appropriate level of control if one does not know how much a certain item accounts to in relation to others. In order to direct control measures correctly, you need to know the figures. In addition, the appropriation forms the legal link with which Parliament and the Government enact their budgetary power. The appropriation in question is implemented in the Ministry for Foreign Affairs according to its Financial Regulation<sup>137</sup>.

As can be observed from table 3, Finland has not met its 0.7 % ODA/GNI target in the current decade and won't meet it in 2015 or 2016<sup>138</sup>. The total appropriations and disbursements for development cooperation (including all ministries) has been around one billion euros for a while now. Please note that development cooperation *infra* includes all assistance sent under every ministry while the Ministry for Foreign Affairs is budgetary responsible for *actual* development cooperation, development cooperation loans and development cooperation financial investments appropriations.

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<sup>137</sup> See Financial Unit 2015 pp. 7–13.

<sup>138</sup> Finland reached the mark last time in 1991 with 0.75 % ODA/GNI. See Department of Development Policy 28 September 2015 p. 2. Interestingly, this was during the Finnish recessions of the 1990s. See also Library of Congress 06 September 2015.

Table 3 Total Development Cooperation Funding (million €) 2010–2016<sup>139</sup>

|                            | 2010    | 2011    | 2012    | 2013    | 2014    | 2015    | 2016  |
|----------------------------|---------|---------|---------|---------|---------|---------|-------|
| <b>Appropriations</b>      | 965.6   | 1 073.8 | 1 173.1 | 1 118.3 | 1 102.7 | 1 012.3 | 713.6 |
| <b>Disbursements (ODA)</b> | 1 006.4 | 1 013.3 | 1 026.7 | 1 081.1 | 1 232.0 | -       | -     |
| <b>ODA / GNI</b>           | 0.53    | 0.51    | 0.51    | 0.53    | 0.60    | -       | -     |

As was stated in Chapter 1.1, the Government plans to cut the development cooperation appropriation by approximately 200 million euros for the year 2016. Revenues from the Emissions Trading System will no longer be directed to development cooperation. 130 million euros will be transformed into loans and to the capital of FINNFUND<sup>140</sup>. This trend can be directly observed from the current Government Programme *infra*.

The Government will take steps to improve effectiveness, productivity and measurability of development cooperation. In the longer term, the aim is to raise, in accordance with the UN goals, the level of Finland's development cooperation contribution to 0.7% of gross national income, even though savings will be directed at development funding during the term of government.<sup>141</sup>

The Development Policy Programme can be determined as a subprogramme of the Government Programme. Since the last Development Policy Programme is from 2012, a new one is currently being worked upon in the Ministry for Foreign Affairs (MFA) based on the Government Programme in force and the SDGs. But for example in the Development Policy Programme 2012, it is stated that monitoring and reporting of development results at all levels will be strengthened by clear and measurable goals. Also, the internal control and external evaluations will be utilised systematically at the MFA.<sup>142</sup>

The State Budget expenditures are categorized hierarchically into main divisions, chapters and items. Simply put, main divisions cover different ministries and sectors, chapters cover different activities and types (e.g. immigration, traffic infrastructure) and items cover different objectives and natures (e.g. refugee reception, icebreaker acquisitions). (SBA § 6, SBD §§ 4–5.) Actual development cooperation (i.e. the development cooperation maintained by the MFA) is categorized as item 24.30.66. Loans are categorized as item 24.30.80 and FINNFUND as

<sup>139</sup> Ministry of Finance [budjetti.vu.fi]: GP ps 30/2015: BP for the year 2016, main division 24, chapter 30 p. 2.

<sup>140</sup> *Idem* p. 1.

<sup>141</sup> Strategic Programme of Prime Minister Juha Sipilä's Government 2015 p. 38.

<sup>142</sup> Development Policy Programme 2012 pp. 13–14, 21.

24.30.88. The amount of aid loan appropriations planned for the year 2016 is 40 million euros<sup>143</sup>.

Below in table 4, the overall allocations of actual development cooperation (item 24.30.66) is displayed. These mostly correspond to the aforementioned OECD classifications of development cooperation.

Table 4 Budget Allocation Table of Item 24.30.66 (million €) 2012–2016<sup>144</sup>

| <b>Allocation</b>   | <b>2012</b>  | <b>2013</b>  | <b>2014</b>  | <b>2015</b>  | <b>2016</b>  |
|---|--------------|--------------|--------------|--------------|--------------|
| 1 Multilateral development cooperation  | 258.6        | 278.4        | 351.7        | 268.6        | 119.3        |
| 2 Country-specific and regional development cooperation                       | 240.6        | 247.3        | 290.0        | 234.4        | 148.0        |
| 3 European Development Fund   | 42.4         | 47.1         | 47.8         | 25.2         | 45.0         |
| 4 Non-country specific development cooperation                                | 49.7         | 60.7         | 61.2         | 57.3         | 36.7         |
| 5 Humanitarian assistance   | 84.4         | 96.4         | 105.7        | 74.8         | 70.0         |
| 6 Planning, support functions and communication of development cooperation    | 8.7          | 10.6         | 8.0          | 8.0          | 5.0          |
| 7 Evaluation and internal audit of development cooperation                    | 2.1          | 2.2          | 1.9          | 2.7          | 2.3          |
| 8 Support to development cooperation conducted by civil society organisations | 95.0         | 105.1        | 109.9        | 114.0        | 65.0         |
| 9 Concessional credits  | 7.4          | 14.2         | 15.1         | 16.5         | 6.8          |
| <b>SUM</b>  | <b>788.9</b> | <b>862.0</b> | <b>991.3</b> | <b>801.5</b> | <b>498.1</b> |

In table 5, the multilateral development cooperation (allocation 24.30.66.1) has been divided into individual allocations as per section 9 of State Budget Act. The outcome of categorizing

<sup>143</sup> Ministry of Finance [budjetti.vm.fi]: GP ps 30/2015: BP for the year 2016, main division 24, chapter 30 p. 8.

<sup>144</sup> *Idem*, p. 3; Department of Development Policy 28 September 2015 p. 2.



and dividing the budget is same as any other budget: To appropriately specify spending limits into separate sections and delegate the sections to relevant departments.

Table 5 Allocation 24.30.66.1 Distribution Plan (1 000 € estimate) 2015<sup>145</sup>

|   |                |
|---|----------------|
| <b>UN ORGANIZATIONS</b>                               | 116 370        |
| UN Development Programme (UNDP)                       | 15 600         |
| UN Children's Fund (UNICEF)                           | 20 000         |
| UN Population Fund                                    | 33 550         |
| UN Women  | 14 000         |
| Others  | 33 220         |
| <b>WORLD BANK GROUP</b>                               | 94 958         |
| International Development Association                 | 84 316         |
| Debt Relief Programs                                  | 7 792          |
| World Bank Group Partnership Programs                 | 2 850          |
| <b>REGIONAL DEVELOPMENT FINANCE INSTITUTIONS</b>      | 42 159         |
| African Development Bank and African Development Fund | 36 309         |
| Asian Development Bank and Asian Development Fund     | 5 250          |
| Inter-American Development Bank capital raise         | 600            |
| <b>OTHER MULTILATERAL ORGANIZATIONS</b>               | 13 783         |
| Global Environment Facility                           | 4 325          |
| Others  | 9 458          |
| <b>UNDIVIDED</b>                                      | 1 298          |
| <b>SUM</b>  | <b>268 568</b> |

<sup>145</sup> Ministry of Finance [budjetti.vm.fi]: Consolidated BP for the year 2015, main division 24, chapter 30, p. 5–6. Retrieved 28 September 2015.

FINNFUND is a state-owned company. Its primary objective is to promote the economic and social development of developing countries pursuant to section 2 paragraph 1 of the FINNFUND Act. According to the planned 2016 Budget Proposal, the ‘financial investments of development cooperation’ (item 24.30.89) appropriation is about to be *de facto* expanded by a 130 million (table 6). It will consist of a 130 million euro appropriation to FINNFUND and a 10 million appropriation to Inter-American Investment Corporation.

Table 6 Item 24.30.89 Appropriations (€) 2013–2016<sup>146</sup>

|                          |             |
|--------------------------|-------------|
| 2016 Budget Proposal     | 140 000 000 |
| 2015 Financial Statement | 10 000 000  |
| 2014 Financial Statement | 10 000 000  |
| 2013 Financial Statement | 18 000 000  |

According to State Budget Act section 8, the different items shall also include budget justifications. The justifications form a link between the effectiveness of the Ministry and the appropriations granted<sup>147</sup>. The justifications of BP 2016 for chapter 24.30 include *inter alia* that the Sustainable Development Goals will act as an important framework for the budget and that the budget will focus as per the Government Programme on e.g. the condition of girls and women, human rights, rule of law, anti-corruption work, reinforcement of developing nations tax bases, sustainable development including climate change, and progress of developing nations private sectors. Improving the measurability, performance and impact of development cooperation is a center of gravity for the budget.<sup>148</sup>

Next in line are three charts compiled by the OECD. The purpose of tables 7, 8 and figure 9 is to show how OECD and Development Assistance Committee (DAC) standards can be tied to national development cooperation budgeting. Table 7 specifically demonstrates how Finnish development cooperation channeled to countries (instead of regions or NGOs) is distributed according to the DAC *type of aid* classification. An overwhelming quantity of Finnish country-specific aid is transferred to project-type interventions (69.2 %).

<sup>146</sup> Ministry of Finance [budjetti.vm.fi]: GP ps 30/2015: BP for the year 2016, main division 24, chapter 30 p. 8 and Ministry of Finance [budjetti.vm.fi]: BP for the year 2015, main division 24, chapter 30 p. 15. Note that item 89 was *de facto* item 88 before 2016.

<sup>147</sup> Ministry of Finance 2005 p. 32.

<sup>148</sup> Ministry of Finance [budjetti.vm.fi]: GP ps 30/2015: BP for the year 2016, main division 24, chapter 30, p. 1.

Table 7 Composition of country programmed aid 2013<sup>149</sup>

|  |                |
|--|----------------|
| General budget support   | 7.6 %          |
| Sector budget support  | 6.2 %          |
| Core support to NGOs, other private bodies, PPPs and research institutes | 0.0 %          |
| Contributions to specific-purpose programmes and funds managed by INGOs  | 10.8 %         |
| Basket funds/pooled funding  | 4.6 %          |
| Project-type interventions   | 69.2 %         |
| Donor country personnel  | 0.2 %          |
| Other technical assistance   | 1.4 %          |
| Scholarships/training in donor country                                   | 0.0 %          |
| <b>Grand Total</b>   | <b>100.0 %</b> |

Table 8 Bilateral ODA in support of gender equality by sector (million €) 2013<sup>150</sup>

| <b>Sector</b>                      | <b>Significant +<br/>principal<br/>objective</b> | <b>Total sector<br/>allocable aid</b> | <b>Gender equality<br/>focused aid</b> |
|------------------------------------|--|---------------------------------------|--|
| Economic infrastructure            | 19.4   | 57.1                                  | 34 %                                   |
| Education                          | 53.4   | 60.9                                  | 88 %                                   |
| Government and civil society       | 73.1   | 120.0                                 | 61 %                                   |
| Health                             | 5.2  | 10.9                                  | 48 %                                   |
| Multisector                        | 11.4   | 31.1                                  | 37 %                                   |
| Other social infrastructure        | 16.8   | 31.9                                  | 52 %                                   |
| Population and reproductive health | 10.0   | 10.3                                  | 98 %                                   |
| Production                         | 21.3   | 72.0                                  | 30 %                                   |
| Water and sanitation               | 11.2   | 29.7                                  | 38 %                                   |

Table 8 on other other hand gives us the relation of DAC classifications *marker* and *sector of destination* in Finnish bilateral ODA in 2013. The funds marked as as a principal or a

<sup>149</sup> OECD 2015 p. 203. StatLink [dx.doi.org/10.1787/888933244323].

<sup>150</sup> OECD 2015 p. 205. StatLink [dx.doi.org/10.1787/888933244380]. USD currency transformed into euros with the rate of 04 October 2015: 1 USD = 0.892 EUR.

significant objective in promoting gender equality are displayed in relation to the total aid in the sector. It seems that in the policy objective of gender equality, Finland focuses its funding on the ‘Education’ (88 %) and ‘Population and reproductive health’ (98 %) sectors. Finland used in total 222 million euros of bilateral ODA to support gender equality in 2013.

The top receiver of Finnish bilateral ODA was Tanzania with 26.3 million € in the 2012–2013 average. The top 10 recipients accounted for 59 % of the bilateral ODA. As can be seen, most of Finnish bilateral aid was directed at Sub-Saharan Africa (34 %) in 2012–2013, while 34 % of bilateral ODA was unspecified by region. (Figure 3.)

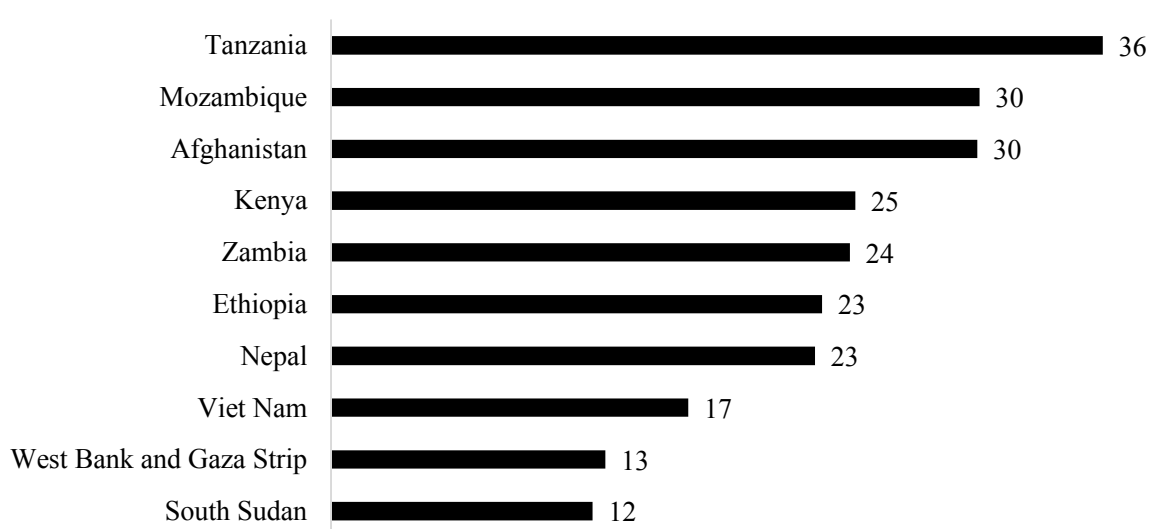


Figure 3 Bilateral country-allocable ODA to top 10 recipients (million €) 2012–2013<sup>151</sup>

### 3.3 Chapter Summary

MFA and the use of development cooperation appropriations is subject to the financial duties laid down in the Constitution, State Budget Act and State Budget Decree. The Ministry of Finance regulates the multiple different criteria (e.g. effectiveness, public impact) that are to be addressed in budgeting and budget use. The normative status of budgets, regulations and appropriations is not as clear as most other legislative instruments. Nevertheless, it can be agreed that the budget exerts a duty to fulfil the Parliament’s financial wishes. Thus, the MFA

<sup>151</sup> OECD 2015 p. 204. StatLink [dx.doi.org/10.1787/888933244355]. USD currency transformed into euros with the rate of 04 October 2015: 1 USD = 0.892 EUR.

must orchestrate development cooperation in accordance with the appropriation introduced here and use the funds in an operationally and strategically effective and impactful manner. In other words, MFA must plan for and attain results without wasting inputs or resources. The outputs, results and impacts should have a positive effect on the societies of developing states.

The total development aid or ODA budget has been proposed by the Government as about 700 million euros for the year 2016. Finland has not achieved the 0.7 % ODA/GNI target in the recent years and the chances of achieving it in the near future are slim. While actual development cooperation is decreased by approximately 200 million, there will be a 130 million increase for FINNFUND and development aid investments. The appropriations are also distributed to numerous different projects which may present a controllability problem in terms of control resources (e.g. geographically-wise). I think it is safe to say that controlling one entity is always easier than controlling a number of entities. This and the complexity of the normative budgeting construct and the aforementioned vague criteria form a cloudy legal network and are issues that might not be the true intent of the legislature. While the appropriation does truly set certain limits for budget use, the performance guidance framework is somewhat indecisive and disconnected with e.g. EU budgeting.

## 4 Duty to Control

### 4.1 Controlling State Funds

#### 4.1.1 Control as a Form of Responsibility and Accountability – *ratio juris*

The last analysis chapter will detail the control of central government finances at both the state and the ministry level. Instead of parliamentary control and the wishes of the legislator, this chapter will burrow more deeply into organs and mechanisms contributing to actual control and answer two questions:

- 1) Why are public funds controlled and
- 2) how is control maintained according to norms?

The objective of the private sector is to earn profit whereas the objective of public sector finances is to provide the society with services and infrastructure that it needs to function. Myllymäki specifically states that “public sector finances do not exist for public sector finances itself and the organizations managing it, but for the society and the citizens”.<sup>152</sup> The public sector uses the funds gathered from citizens via fiscal policy and taxation with the authority of Parliament. In the end, Parliament is only a relay between the public sector and the citizens (Constitution § 2(1)<sup>153</sup>). Thus, the public sector is responsible and accountable to the public for its financial actions. This responsibility exists in different criteria according to GP 56/2003 ps: legal, political, performance, administrative, ethical and moral responsibilities. In general, responsibility means the duty of public sector financial management to report on its activities, to be evaluated according to the aforementioned criteria and to make conclusions based on the evaluations. Responsibility is embodied in accountability. Accountability means the duty of the administration to display a true and fair view of its finances in the form of annual activity reports, income and expenditure statements, balance sheets, reports on operations etc.<sup>154</sup>

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<sup>152</sup> Myllymäki 2007 pp. 23-24. Citation on p. 24.

<sup>153</sup> “The powers of the State in Finland are vested in the people, who are represented by the Parliament.”

<sup>154</sup> GP 56/2003 ps pp. 5–6.

This link between the public and the public sector is an integral part of audit theory as they construct a so called agent-principal relationship between them<sup>155</sup>. The public sector is an agent working for the public. Thus, the public sector is obliged to act in the best interest of the public. In order to ensure that the agent is using the principal's funds efficiently and effectively, control is needed. The controller satisfies the need for the assurance that the agent is doing its job correctly.<sup>156</sup>

Control is roughly divided into two categories organization-wise: *Internal* and *external control*. The terms are almost self-explanatory: Internal means control within the organization e.g. by the Evaluation Unit (EVA) of the Ministry for Foreign Affairs (MFA). Likewise, external means control from outside the organization. Consider for example the relationship between the National Audit Office (NAO) and the MFA.<sup>157</sup> The scope and mission of internal control according to section 69, subsection 1 of the State Budget Decree (SBD) is displayed in full below:

The agency management shall ensure that the proper procedure is followed by government agencies relative to the scope and content of their finances and operations and related risks (internal control) in order to ensure:

- 1) the legality and results of the finances and operations of government agencies;
- 2) the security of the funds and assets managed by government agencies; and
- 3) the true and fair view of the finances and operations of government agencies required for each government agency's management and external steering

Bergmann defines internal control in a more compact form as follows:

Internal control means any systems, measures or processes in order to ensure that public sector financial management operates in an efficient and effective manner, as well as in full compliance with any standards of laws.<sup>158</sup>

Both definitions could be almost identical to external control with only minor modifications i.e. the mission of external control is to ensure that units follow legislation properly, manage funds effectively, provide a true and fair view of their finances etc. The viewpoint and whether

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<sup>155</sup> See e.g. Ittonen 2010 pp. 3-35 for more on audit theory and the agency theory.

<sup>156</sup> Myllymäki 2007 pp. 132–133.

<sup>157</sup> See e.g. Wacker 2011 pp. 246–247.

<sup>158</sup> Bergmann 2008 p. 115.

the unit of control is inside or outside the organization are the relevant differences between internal and external control.

The State Budget Act or the State Budget Decree do not contain provisions concerning ministry-level internal control. Only the internal control of government agencies and public bodies has been stipulated as mandatory (e.g. SBA § 24b and SBD § 69(1)). According to Myllymäki, the internal control of ministries can be deduced from Government Rules of Procedure (GROP) chapter 3 and the accompanying Government orders<sup>159</sup>. For example, each ministry shall, within its mandate, consider operational and financial planning matters, matters concerning performance guidance, administrative matters, development and monitoring as stipulated in GROP section 11(2). *Contra*, in its recent effectiveness report concerning the guidance system of the MFA, the National Audit Office only referred to SBA § 24b and SBD § 69(1), even though they do not contain provisions that bind ministries<sup>160</sup>. Nevertheless, the Ministry for Foreign Affairs Rules of Procedure (MFAROP) sections 3 and 4 organize internal control as a part of the Ministry. So even though there does not seem to be clear indication in Parliamentary legislation that ministries should organize internal control, it seems to be a *de facto* condition. The obligation to monitor financial activities could be with relative ease expanded and conducted with the aforementioned GROP section 11(2).

In addition to the external-internal category, control can be divided by substance and temporally according to Myllymäki. As in the aforementioned SBD section 69(1), control has two separate substances to monitor: The *control of legality* and *control of expediency*. The function of control is to monitor that public sector finance management follows legislation, the budget, appropriations and other relevant norms, but in addition control monitors that the funds are spent appropriately, rationally and effectively. Temporally, control consists of monitoring and audits. Monitoring is constant while audits are performed on final accounts and reports *ex post*.<sup>161</sup> Control before an asset is used (*ex ante*) is defined as appraisal in the Ministry for Foreign Affairs, but it could also be called e.g. decision-making control or pre-evaluation.

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<sup>159</sup> Myllymäki 2007 p. 149.

<sup>160</sup> NAO p. 68. 2013.

<sup>161</sup> Myllymäki 2007 p. 136.



#### 4.1.2 Relevant Authorities and the Framework of Control

As set by section 90(1) of the Constitution, Parliament supervises State finances and compliance with the State Budget and for this purpose, Parliament shall have an Audit Committee. The Audit Committee of Parliament was established on 1 June 2007 as one of the components controlling state funds. It was preceded by state auditors and a sub-committee of the Finance Committee. The control methods of the Audit Committee include *inter alia* hearing committees, inspections targets and requesting reports from the Government and appropriate ministers and.<sup>162</sup>

Section 90(2) of the Constitution establishes the second control organ of the Constitution level: For the purpose of auditing State finances and compliance with the State budget, there shall be an independent National Audit Office (NAO) in connection with Parliament. NAO is the central agency in charge of controlling state finances, business-based public bodies and off-budget funds. The mission of NAO is to audit the State's financial management and compliance with the budget and to monitor fiscal policy rules (Act on the NAO 676/2000 § 1(2)). NAO audits *inter alia* the final accounts of the Ministry for Foreign Affairs<sup>163</sup>. NAO was transferred in 2000 from the organization of the Ministry of Finance to act as an independent agency as a part of Parliament. Before the transfer, the independence of NAO was regarded as problematic since the Ministry of Finance was one of NAOs audit targets.<sup>164</sup> The mission of NAO is an intrinsic value i.e. its purpose is to assure the Parliament, the administration and the public of the legality of budget use. It roots out ineffectiveness in the administration as well.<sup>165</sup>

Myllymäki identifies three other organs in indirect control of the budget: The Chancellor of Justice of the Government (Constitution § 108), the Parliamentary Ombudsman (Constitution § 109) and the public<sup>166</sup>. The duties of the Chancellor and the Ombudsman are mostly overlapping since it is the duty of both to ensure that the courts of law, the other authorities and the civil servants, public employees and other persons, when the latter are performing a public task, obey the law and fulfil their obligations. The Chancellor also oversees the lawfulness of the official acts of the Government and the President of the Republic. The public has access to

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<sup>162</sup> Wacker 2011 pp. 249–250.

<sup>163</sup> See e.g. National Audit Office of Finland 2015b for the audit of MFA's budgetary year 2014.

<sup>164</sup> Myllymäki 2007 pp. 159–160; Wacker 2009 p. 42.

<sup>165</sup> Myllymäki 2007 pp. 167–168. NAO has audited MFA on different themes see e.g. references National Audit Office of Finland 2010 and 2013 (in Finnish). Abstracts can be found at the NAO website [[www.vtv.fi/en](http://www.vtv.fi/en)].

<sup>166</sup> Myllymäki 2007 p. 191.

budgeting and performance documents pursuant to the Act on Openness of Government Activities section 9(1) since they enter the public domain upon completion<sup>167</sup>.

Broadly speaking, many other authorities and entities could be labelled as performing control on state finances e.g. the police, the Tax Administration, the EU, the European Anti-Fraud Office (OLAF<sup>168</sup>) and the Financial Supervisory Authority. In addition to officials and the public in general, newspapers, the media and NGOs like Transparency International can be classified as exerting control over public funding.

In the context of this thesis, a fairly important task rests upon the Government's financial controller function attached to the Ministry of Finance. The purpose of the controller function is to ensure and develop the quality and financial accountability of the system used to control and report on central government finances and operations. The controller function *inter alia* co-ordinates, guides, develops and observes matters relevant to central government finances and operations as laid out in State Budget Act (SBA) section 24f. This duty equals to guiding and recommending the *control framework* that is to be used by administration officials. Section 24f(1)(2) ties the controller directly to the subject at hand as it is laid out:

It is the duty of the Government financial controller's function to guide and co-ordinate, and to develop, State annual account reporting and other reporting and assessment concerning central government finances and performance, and the arrangement of internal control [--].

The Council for Internal Control and Risk Management is a prominent organ that works in conjunction with the controller function. It has numerous tasks of which the most relevant are listed *infra*:

The task of the Council is [--] to agree on the procedures in internal control and in the administrative supervision of financial management with other authorities and government agencies, and to prepare the measures required therein; [--] (SBD § 71(2)(3))

to arrange for coordination of the internal auditing of government agencies and when necessary to harmonize the internal auditing activity of the government agency and the application of results; [--] (SBD § 71(2)(5))

The aforementioned provisions seem to grant a mandate for the controller function and the Council to organize the common internal control framework of State finances. This is

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<sup>167</sup> § 9(1): "Everyone shall have the right of access to an official document in the public domain." Most budgetary documents cannot be declared secret pursuant to section 23 of the Act in question.

<sup>168</sup> From French, 'Office européen de lutte antifraude'.

especially the case when the aforementioned information is combined with section 69a, subsection 1:

The effects on the activity of government agencies of European Community law shall be taken into account in the internal control procedures. In addition, general standards and recommendations regarding internal control shall be taken into account.

It should be noted at this point that the State Budget Decree is a decree proposed by the Ministry of Finance. Nevertheless, it seems that the *general standards and recommendations regarding internal control* are raised to a higher normative level pursuant to section 69a(1). Moreover, the controller function and the Council for Internal Control and Risk Management arrange these general standards and recommendations within the administration.

In 2005 The Council issued a recommendation concerning internal control in State administration and which the controller function consolidated and circulated among the administration<sup>169</sup>. The recommendation contained a *control framework* for Finnish administrative use although its use was not deemed mandatory. The Finnish framework was based on the *quasi-public* Enterprise Risk Management - Integrated Framework (ERM). The framework displayed *infra* encompasses the aspects that a functioning internal control should examine and address:

- the agency's operating environment;
- setting of objectives;
- identification, evaluation and management of risks;
- controls (control measures);
- communication and flow of information;
- and monitoring of internal control and risk management performance.

A more compact form of the framework was issued in 2009 In addition to the recommended control framework, other general frameworks can be utilized according to the controller function<sup>170</sup>. One of these include the aforementioned ERM that was crafted by the US Committee of Sponsoring Organizations of the Treadway Commission (COSO) and its composition can be seen in table 9. The Finnish recommendation and the ERM are almost

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<sup>169</sup> See Government Financial Controller Function 2005.

<sup>170</sup> *Ibidem*.

identical and since the ERM contains data in a more compact and clear form on individual components, it will be displayed here.

Table 9 Components of Enterprise Risk Management (ERM)<sup>171</sup>

|                               |  |
|-------------------------------|--|
| Internal Environment          | The internal environment encompasses the tone of an organization, and sets the basis for how risk is viewed and addressed by an entity's people, including risk management philosophy and risk appetite, integrity and ethical values, and the environment in which they operate.                                    |
| Objective Setting             | Objectives must exist before management can identify potential events affecting their achievement. Enterprise risk management ensures that management has in place a process to set objectives and that the chosen objectives support and align with the entity's mission and are consistent with its risk appetite. |
| Event Identification          | Internal and external events affecting achievement of an entity's objectives must be identified, distinguishing between risks and opportunities. Opportunities are channeled back to management's strategy or objective-setting processes.   |
| Risk Assessment               | Risks are analyzed, considering likelihood and impact, as a basis for determining how they should be managed. Risks are assessed on an inherent and a residual basis.  |
| Risk Response                 | Management selects risk responses – avoiding, accepting, reducing, or sharing risk – developing a set of actions to align risks with the entity's risk tolerances and risk appetite.   |
| Control Activities            | Policies and procedures are established and implemented to help ensure the risk responses are effectively carried out.   |
| Information and Communication | Relevant information is identified, captured, and communicated in a form and timeframe that enable people to carry out their responsibilities. Effective communication also occurs in a broader sense, flowing down, across, and up the entity.  |
| Monitoring                    | The entirety of enterprise risk management is monitored and modifications made as necessary. Monitoring is accomplished through ongoing management activities, separate evaluations, or both.  |

As can be seen from the ERM components, internal control is seen more as a form of *risk control* in auditing and evaluation. If there is a risk of accidents, abuse, loss of assets etc. control is to detect it and reduce the possibility of risk realization. Thus, these control frameworks

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<sup>171</sup> COSO 2004 pp. 3–4.

address more phenomena than simply poorly decided development aid funding. In addition the framework displays the multitude of tasks control consists of *de facto*.

ERM and another framework developed by COSO, the Internal Control framework<sup>172</sup>, secured their place in the world of control thanks to the US Sarbanes-Oxley Act (SOX) of 2002<sup>173</sup>. The Act enforced publicly listed commercial corporations to follow a strict set of financial reporting, independence of auditors, corporate governance etc. provisions. Although intended for the private sector, the SOX has become applicable to the non-profit and public sector as well. Bergmann stated in 2008 that there is no international equivalent law or standard to the SOX.<sup>174</sup>

Interestingly, the Internal Control framework of COSO is not seemingly used at all in Finnish State financial management. But as COSO itself reminds us, the ERM and the Internal Control frameworks share overlapping components and that they are meant as complementary to each other<sup>175</sup>. The International Standard Organization (ISO) has also engineered a relevant framework in 2009, the risk management framework ISO 31000. The ISO 31000 is intended to harmonize risk management across all entities (public, private or community enterprise, association, group or individual) and to be used as a uniform tool to analyse risk.<sup>176</sup> There has been some debate if the ISO 31000 should be implemented into Finnish public sector financial management.

The National Audit Office (NAO) complies with the International Standards of Supreme Audit Institutions (ISSAI) of the International Organisation of Supreme Audit Institutions (INTOSAI)<sup>177</sup>. The INTOSAI standards as well as the International Standards for the Professional Practice of Internal Auditing developed by the Institute of Internal Auditors (IIA) shall be omitted. There simply is not enough time and space to display even a shallow surface of all the recommendations and standards at hand. But it should be noted that the European Commission's Directorate-General for Budget is spearheading the EU-wide Public Internal Financial Control (PIFC) model for Member State use. The objective of PIFC is to "implement sound financial management as an integral part of good governance relating to the management

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<sup>172</sup> COSO 2013.

<sup>173</sup> Act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

<sup>174</sup> Bergmann 2008 pp. 118, 121–122.

<sup>175</sup> COSO 2013 p. ii.

<sup>176</sup> International Organization for Standardization 2009.

<sup>177</sup> National Audit Office of Finland 2015a p. 7; INTOSAI 04 October 2015.

and control of the national budgetary funds”.<sup>178</sup> The PIFC is a part of harmonization process and can also be tied to the Financial Regulation of the EU and specifically to its Article 30.

If performance guidance seemed complicated and vague, then control frameworks are even more obscure. The science of auditing and evaluation contains more similar frameworks that are researched extensively. The jump from the State Budget Act and State Budget Decree to control frameworks and standards is a notable one since it most definitely marks the border between hard law and soft law. The control frameworks and standards are more akin to professional principles than to Parliamentary legislation. As a testament to the obscurity of control definitions, the Government of Prime Minister Jyrki Katainen stated the following:

There is no single, universally adopted, approach to risk management in development cooperation. Finland, for its part, aims to advance the harmonisation of risk management practices within the international organisations to which we belong; a broad consensus prevails among the donor community regarding the benefits of harmonisation.<sup>179</sup>

## 4.2 Control in the Ministry for Foreign Affairs

### 4.2.1 Deciding Upon Development Cooperation Funding

Interestingly, there is no general parliamentary law for development cooperation or for its funding. Most of the statutes concerning aid have been showcased here, but there are two additional parliamentary acts concerning side details of the issue at hand. First, the participation of state agencies and public bodies in development cooperation has been sanctioned by Parliament. The state agencies and public bodies are to do so in tight collaboration with the MFA. The funds for the operations are activated from the MFA’s development cooperation budget (chapter 24.30).<sup>180</sup> Second, Parliament has enacted the Act on Concessional Credits

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<sup>178</sup> European Commission 2012 p. 5; Bergmann 2008 pp. 124–125.

<sup>179</sup> Government Report on the Impact and Coherence of Development Policy 2014 p. 38.

<sup>180</sup> See Act Concerning the Participation of State Agencies and Public Bodies in Development Cooperation 382/1989 and Decree Concerning the Participation of State Agencies and Public Bodies in Development Cooperation 383/1989.

Granted to Developing States 1114/2000<sup>181</sup>. According to sections 3 and 5 of the Act, concessional credits can only be granted to states authorized by the OECD and that the MFA should follow OECD principles when monitoring concessional credit usage. This is seemingly the only place in parliamentary law where OECD is coupled so tightly with Finnish development cooperation. OECD and the US Library of Congress have also noted the lack of development cooperation legislation in Finland<sup>182</sup>. For example, Belgium, Canada and Denmark have enacted general acts on the use of development cooperation<sup>183</sup>.

The decision process of actually funding a certain aid project, program etc. is made at the MFA (appraisal analysis). The appraisal analysis is a tool for decision-maker to guide him in selecting a feasible and sustainable funding. Simply put, in appraisal analysis different criteria will be selected in relation to the goal of the action, the desired performance and other information the decision-maker requires. The criteria will be assessed from multiple viewpoints (effects, weight, sensitivity etc.) and alternative methods will be dropped in the favour of a more sustainable one.<sup>184</sup> Project appraisal is a subject of its own and it will not be explored in detail here. Nevertheless, appraisal analysis and the decision process is a form of *ex ante* control as the use of the funds are controlled even before funds are actually transferred. Myllymäki refers to this sort of processual control as administrative control<sup>185</sup>.

From a legal-technical view the Ministry for Foreign Affairs Rules of Procedure (MFAROP, 550/2008) is a decree of the MFA and thus its place in legal hierarchy is considerably lower than a parliamentary set act or a government decree. MFAROP section 8(1) sets out that operations of the Ministry are performance guided. According to paragraph 2 of the same section, the Secretary of State is in overall charge of the Ministry's performance guidance with Director-Generals and Directors under his supervision. Paragraphs 3 and 4 lay out that that the operational units of the Ministry are accountable for accomplishing their goals, controlling their risks, effectiveness of operations and internal control.

According to section 18 of the MFAROP, the Ministry's operational units are divided into departments. Departments are subdivided into units pursuant to §§ 19–29. The Department of

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<sup>181</sup> Act 1114/2000 repealed the former equivalent Act 1058/1986 on 01 January 2001.

<sup>182</sup> See OECD 2010a p.128; Library of Congress 06 September 2015.

<sup>183</sup> OECD 2010a pp. 116, 119, 122. Germany, Norway and Sweden on the other hand do not have foreign aid legislation, see pp. 134, 158, 167.

<sup>184</sup> See more e.g. Van Pelt, Michiel J.F. – Kuyvenhoven, Arie – Nijkamp, Peter 1990 pp. 145–151. There are multiple different frameworks for project appraisal like the cost-benefit analysis (CBA) and multi-criteria analysis (MCA).

<sup>185</sup> Myllymäki 2007 p. 129.

Development Policy consists of eight different units e.g. Unit for Sectoral Policy, Unit for International Environmental Policy and Unit for UN Development Issues (§ 21<sup>186</sup>). Section 2 states that each department has its own rules of procedure and that units may have one. The departments and units of the MFA are abbreviated with a three letter code that roughly corresponds to the Finnish name of the operational unit. Therefore the Department for Development Policy is abbreviated KEO. Some of the duties and tasks of KEO as laid out in section 33 are:

Finland's international development policy, development cooperation policy, and development and humanitarian financing;

overall planning and monitoring of development cooperation, action plans and financial planning, budget formulation, financial administration as well as statistics and reporting;

quality control, development and guidance related to development cooperation, including development research;

development policy and development cooperation in the EU and the OECD;

FINNFUND, concessional credits and business-to-business partnerships;

development questions in the UN, and the UN's operative development programmes and funds;

sustainable development and international environmental policy, including related financing;

humanitarian aid policy and humanitarian assistance;

The two other operational units central to this thesis are the Unit for Internal Audit and the Development Evaluation Unit<sup>187</sup>. They are abbreviated STY-00 and EVA-11, respectively. The other units are also internally abbreviated with a two digit code (10, 02 etc.).

By the virtue of chapter 6 of the MFAROP, issues are prepared with a normal 'presentation by a presenting officer' method in the appropriate operational unit. The powers of decision are provided in chapter 7 and development cooperation issues are specifically decided pursuant to sections 89–91. First off, the Minister decides upon distributing the actual development cooperation appropriations unto performance areas and the use of appropriations unless otherwise provided. The Director-General of KEO can decide on actual development cooperation appropriation use till 500 000 euros unless it will be used for a private association or foundation or concerns humanitarian assistance, assistance to Finnish universities or universities of applied science, appropriations handled by STY-00 or other significant public

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<sup>186</sup> The duties and tasks of the individual units are laid out in the KEO Rules of Procedure, see HEL7M0621-11.

<sup>187</sup> Interestingly, EVA-11 is called Development Evaluation Unit on the MFA's website, but for instance on the Evaluation Manual EVA-11 is called the Evaluation Office.



issue. The Director of the Unit for Humanitarian Assistance decides on the funding of an urgent and large-scale humanitarian response to a crisis.

The Minister, the Director-General or the Director can delegate the more detailed distribution of appropriations inside a project or a programme to a presenting officer. Roving Ambassadors decide upon appropriation usage in local projects and subsequent contracts in their sector. Director-General of the appropriate department decides on development cooperation with foreign states, international organizations and international financial institutions, on the aid given to the aforementioned organs and on the recovery of assets. Unit Directors decide upon appropriation timetable changes, changes of funding (e.g. return, cancellation), unused project appropriations and other issues that the Director-General does not decide on. The Director-General and Directors can delegate the signing of agreements to public servants. The public servants of the appropriate department decide upon details that were not already decided higher up the chain-of-command e.g. planning, implementation and control of development cooperation, and subsequent contracts, assignments and other commitments. (§ 89–91.) For example, in KEO, Directors decide on the internal work assignments of public servants<sup>188</sup>.

For example, in the implementation of the 2015 budget, the actual development cooperation appropriation<sup>189</sup> was issued to KEO<sup>190</sup>. Minister for International Development Sirpa Paatero assigned the appropriation further to different performance areas on 4 February 2015<sup>191</sup>. For example, the multilateral development cooperation appropriation<sup>192</sup> was delegated to three different departments: Political Department (POL), Department for External Economic Relations (TUO) and the Department for Development Policy (KEO)<sup>193</sup>. Country-specific and regional development assistance<sup>194</sup> is predominantly handled by the regional departments e.g. Department for the Americas and Asia (ASA) and their missions abroad<sup>195</sup>. The implementation document also stressed that the appropriation assignments are binding for the departments, services and embassies<sup>196</sup>.

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<sup>188</sup> HEL7M0621-11 § 14(2).

<sup>189</sup> Item 24.30.66, 801 500 000 euros in 2015, see table 4.

<sup>190</sup> HEL7M0394-9 p. 32.

<sup>191</sup> HEL7W0060-1, see table 10 (Appendix 1).

<sup>192</sup> Allocation 24.30.66.1, 268 600 000 euros in 2015, see table 4.

<sup>193</sup> KEO was issued 264 159 682 euros, POL 610 000 euros and TUO 2 500 000 euros, see table 10 (Appendix 1).

<sup>194</sup> Allocation 24.30.66.2, 234 400 000 euros in 2015, see table 4.

<sup>195</sup> HEL7W0060-1, see table 10 (Appendix 1).

<sup>196</sup> HEL7M0394-9 pp. 24–25.

MFA has three distinct supervisory groups that have an *ex ante* control function in the MFA: According to section 12 of MFAROP, operational units have a Management Group<sup>197</sup> that supports the Director-General and prepares the most significant departmental issues and other issues ordered by the Director-General. The Development Policy Steering Group is set in motion by section 13. The Steering Group prepares strategical advice on development policy goals, resource distribution and on the evaluation and development of results and effectiveness. Pursuant to section 14, the MFA will have a Development Policy Quality Group that processes funding decisions prepared by KEO in accordance with section 90 before they are finalized. The Quality Group does not process e.g. pre-targeted appropriations, humanitarian assistance or projects decided by the Minister.

Outside the MFA's Rules of Procedure, there exists the Development Policy Commission. The Commission is a political advisory body that reviews development policy matters and assesses the quality and effectiveness development cooperation appropriations. The Commission is set by Government Decision for a term, but it has no legal foundation outside the Decision. It consists of several members (e.g. Members of Parliament, NGO representatives, researchers).<sup>198</sup>

#### 4.2.2 Dedicated Control of the ODA Flow

Internal control and internal auditing of the MFA have been laid out in sections 3 and 4 of MFAROP. The objective of internal control is fairly equivalent with section 69 of the State Budget Decree. The main responsibility of organizing the management, steering, monitoring and reporting actions related to internal control has been delegated to appropriate departments and the public servants in question. In addition to MFAROP, the MFA's internal Financial Regulation sets out that internal control should adhere to State directives and recommendations and that directors of operational units are in charge of the general implementation of internal control<sup>199</sup>.

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<sup>197</sup> The MFA organization includes a Management Group of the Ministry and an Extended Management Group of the Ministry as well (MFRAROP §§ 9–10).

<sup>198</sup> See [[www.kehityspoliittintoimikunta.fi](http://www.kehityspoliittintoimikunta.fi)].

<sup>199</sup> Financial Unit 2015 p. 6.

Thus, internal control of development cooperation is first and foremost up to the department in charge of the partial ODA flow, whereas the Unit for Internal Audit (STY-00) as an operationally independent organ ensures the level of internal control and the Development Evaluation Unit (EVA-11) coordinates evaluations. The duties of STY-00 and EVA-11 are set out in sections 44 and 44a of MFAROP, respectively. The MFA Financial Regulation adds that it is the duty of every MFA public servant to report their findings in the event of a suspected inappropriate or risky procedure, dereliction, abuse or crime<sup>200</sup>. The report is then to be relayed to the relevant units (e.g. Unit for Internal Audit, National Audit Office, police).<sup>201</sup> The Financial Regulation outlines the implementation of the budget and bookkeeping in the MFA as well<sup>202</sup>.

According to the Unit for Internal Audit (STY-00) Rules of Procedure<sup>203</sup> section 2, STY-00 provides the leadership of MFA with information on the appropriateness and adequacy of risk management and internal control in the Ministry, the missions and on development cooperation. Internal auditing is divided into *audit of operations* and *audit of finances* (§§ 5 and 6 respectively). Audit of operations can include auditing individual departments, units, missions, a development cooperation implementation organisation or a specific theme. STY-00 plans the audits of operations and the plans are accepted by the Secretary of State. STY-00 produces reports on its audits of operations. Unlike EVA-11, STY-00 does not publish its findings on the MFA website proactively although auditing reports most likely are predominantly open to the public. The audit of finances focuses on inspecting the expediency and legality of appropriation use, and on preparing background memos for audit of operations in the missions of the MFA. The audit of finances can be performed on the MFA itself, departments, units and development cooperation issues as well. The final task of STY-00 is to handle reports of abuse pursuant to section 7 of the STY-00 Rules of Procedure.

The internal regulation Evaluation of Development Cooperation Norm<sup>204</sup> details the evaluation of development cooperation. The objective of evaluation is to act as a component of MFA's accountability and to determine the value of a project or programme in relation to its goals pursuant to section 1 of the Norm. Evaluation is defined as an independent *ex ante*, mid-term or *ex post* procedure that is conducted according to OECDs Development Assistance

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<sup>200</sup> This situation was realized in the Costa Rica-Instrumentarium case, see 2400/R/151/07.

<sup>201</sup> Financial Unit 2015 pp. 38–39.

<sup>202</sup> *Idem* pp. 32–37.

<sup>203</sup> HEL7099-2.

<sup>204</sup> HEL7M0512-1.

Committee (DAC) specifications<sup>205</sup>. Yet again we can see that OECD standards and definitions play a part in many aspects of development cooperation. The MFA's Evaluation Manual points out that MFA uses standards formulated by the EU and UN Evaluation Group (UNEG)<sup>206</sup>. The Evaluation Manual also outlines the *de facto* processes and actions of evaluation.

According to sections 2 and 3 of the Norm, *centralized evaluation* is carried out by the Development Evaluation Unit (EVA-11)<sup>207</sup> and focuses on strategically significant and large-scale matters. In the context of centralized evaluation, EVA-11 is responsible for e.g. conducting evaluations concerning the financial instruments, pivotal policy alignments, process, country programmes and partner organisations. *Decentralized evaluation* is conducted by the appropriate department or mission on a specific project basis and focuses on e.g. appraisal, mid-term and final evaluation. As per the decentralized evaluation doctrine, individual departments and missions are responsible for the *ex ante* (appraisal), midterm, final and *ex post* evaluations of their own projects. EVA-11 coordinates both centralized and decentralized evaluation planning on a two year schedule together with the Development Policy Steering Group (§ 4).

Evaluations are conducted by professionals independent of the MFA and the results of the evaluation are always to be reacted upon as stipulated in sections 5 and 6. For example, the latest tender notice is for a final review of the Energy and Environment Partnership Programme with Indonesia, a project that has been running since 2002. The total budget of the Department for the Americas and Asia (ASA) administrated project is 4.108 million euros and the budget for the evaluation is 80 000 euros.<sup>208</sup> The tendering of independent evaluations is subject to the Act on Public Contracts 348/2007.

Control is performed predominantly by general public servants and by specialists according to administrative orders. Auditors audit the bookkeeping, final accounts and other reports of the entity after the budgetary year. Public sector auditors typically are qualified as chartered public finance auditors (CPFA) and they are to meet the prerequisites set in Act on Chartered Public

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<sup>205</sup> See DAC 2010. The DAC standards for evaluation are created based on the High Fora of Aid Effectiveness e.g. the Paris Declaration.

<sup>206</sup> Ministry for Foreign Affairs 2013 pp. 5, 40.

<sup>207</sup> Evaluation reports produced by EVA-11 can be viewed at [formin.fi/public/default.aspx?nodeid=49728&contentlan=2&culture=en-US].

<sup>208</sup> UH2015-009739. Tender notices can be viewed in the Ministry of Finance online service Hilma. For the aforementioned tender notice, see [www.hankintailmoitukset.fi/fi/notice/view/2015-023512/].

Finance Auditors 467/1999<sup>209</sup>. Auditing in general is subject to Auditing Act 459/2007<sup>210</sup>. Internal auditors may possess a Certified Internal Auditor (CIA) issued by the non-governmental Institute of Internal Auditors (IIA)<sup>211</sup>. As Myllymäki puts it, “good auditing practice [Auditing Act § 22] is an empty provision without the institutions and the people who shape said practice”<sup>212</sup>.

The openness of development aid documents and the ability to report infringements also contribute to overall control. Official documents prepared by MFA in the framework of development cooperation are mainly in the public domain and thus everyone has a right to access them. It is the duty of authorities to produce and disseminate e.g. guides, statistics and publications on their matters as well.<sup>213</sup> The different development cooperation projects and various other publications can be openly viewed on the MFA web site<sup>214</sup>. This notion of openness is emphasized e.g. in the Evaluation of Development Cooperation Norm sections 4 and 7. The MFA set up an electronic system for reporting alleged misuse of Finland’s development cooperation funds in May 2014<sup>215</sup>.

The Parliamentary Finance Committee stressed in its report on the 2015 Budget that control is a substantive part of development cooperation and it serves the purpose of responsibility. The Committee was concerned that aid is still being transferred to numerous small entities instead of sizeable targets. With more uniform targeting, the effectiveness of funding use could be improved.<sup>216</sup>

On 6 May 2015, MFA released a meta-evaluation of project and programme evaluations between 2012 and 2014 conducted by Universal Management Group Ltd. One of the conclusions of the meta-evaluation was that “[o]verall, the quality of Finland’s development co-operation was rated most positively in terms of the relevance and effectiveness of evaluated projects and least positively in relation to their efficiency and sustainability of results<sup>217</sup>”. But

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<sup>209</sup> The Act on Chartered Public Finance Auditors will be repealed by the new equivalent Act 1142/2015 on 01 January 2015.

<sup>210</sup> The Auditing Act will be repealed by the new equivalent Act 1141/2015 on 01 January 2015.

<sup>211</sup> See [na.theia.org].

<sup>212</sup> Myllymäki 2007 p. 185.

<sup>213</sup> Act on the Openness of Government Activities 621/1999 §§ 5, 6, 9, 19, 20, 22 §.

<sup>214</sup> [formin.fi/public/default.aspx?nodeid=48019&contentlan=2&culture=en-US]

<sup>215</sup> [vaarinkaytosilmoitus.fi/#/?lang=en]

<sup>216</sup> Report of Finance Committee 37/2014 ps p. 15.

<sup>217</sup> Ministry for Foreign Affairs 2015 p. 76.

on the other hand, the meta-evaluation noted that risk assessment (i.e. control) was graded as poor:

Risk management was lacking in many projects. Risks were often not taken into account during the design phase, and risk assessments were not always complete or accurate. Where mitigating strategies were not in evidence, emerging risks contributed to delays in implementation, and in some cases became a barrier to projects achieving their intended project objectives.<sup>218</sup>

The dedicated control at the MFA thus consists of three levels: 1) decentralized and inherent control at the departments and units responsible for the funding decisions augmented by the Development Policy Quality Group, 2) centralized and evaluative control at EVA-11 augmented by the Development Policy Steering Group and 3) upkeep of control by STY-11. The temporal limits of each level are not set in stone. The departments and units perform *ex ante* control of projects, but they also have to monitor project progress and the eventual outcome. Concurrently, EVA-11 can issue appraisal evaluations, mid-term evaluations as well as *ex post* evaluations. The same rules apply to STY-11. Interestingly, none of the regulations and documents showcased here mention the ERM or any other control framework. The Evaluation Norm contains references to DAC, EU and UNEG standards.

### 4.3 Chapter Summary

Public funds are controlled because the funds are amassed from the public. The objective of control is to monitor and assure that public entities operate effectively and according to legislation i.e. that the funds are used responsibly and accountably. Control can be external or internal organisation-wise and temporally it can be performed *ex ante*, constantly during the process and *ex post*. All modes of control are exerted by numerous different entities in the State and Ministry for Foreign Affairs e.g. Audit Committee, NAO, financial controller function, STY-00, EVA-11 and different departments.

Control is supported by frameworks. The financial controller function has set forth the recommendation of an internal control framework in the State based upon the ERM. Like performance guidance of the State budgeting, control frameworks seem like overtly complicated tools. These frameworks are not utilised by the MFA even though it is the wish of

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<sup>218</sup> Ministry for Foreign Affairs 2015 p. 77.

the Government that control and risk management should be harmonised. I do not suggest that ERM or the current frameworks are the best options, but there is a clear disparity in control methods between different State entities.

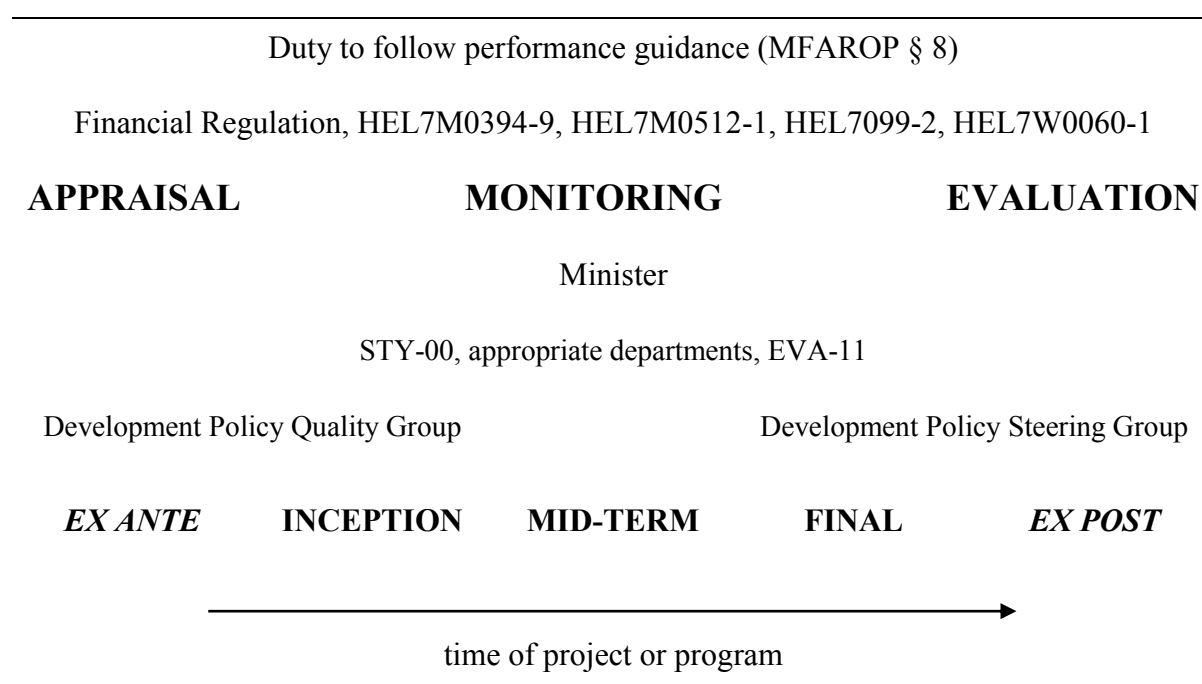


Figure 4 Control Regulations, Forms, Entities and Phases in the MFA<sup>219</sup>

The different components of control at the MFA are displayed in figure 4 *supra*. The implementation of appropriations are set by the Minister to different performance areas and subsequently to the authority of Director-Generals, Directors and public servants in the internal budget and internal regulations (e.g. the implementation document and Financial Regulation) according to the MFAROP. Thus, the development cooperation appropriation laid out by Parliament is relayed to individual public servants through a public chain of command.

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<sup>219</sup> Based partly on figure 4 of the Evaluation Manual, see Ministry for Foreign Affairs 2013 p. 37.

## 5 Thesis Summary and Discussion – The 2030 Agenda

Only time will tell in which way the new SDGs and the renewed motivation to transfer aid will take development cooperation. The trend so far seems to be that more effective, more controlled, more transparent and more responsible development cooperation is called upon. And the political or soft legal pledge of the United Nations and its Member States to end poverty, end hunger, achieve gender equality, ensure access to energy etc. will most likely not disappear or be rendered vain in the nearby future. *Ergo*, Finland will have to follow through just like other nations and keep on transferring aid.

The outline of the results and the accumulated answer to the research question<sup>220</sup> can be found in figure 5. The relevant norms are set in a somewhat hierarchical position in which the UN General Assembly resolutions stand as the most binding of norms while the Ministry for Foreign Affairs internal norms serve the less binding. This seems counterintuitive from a legal viewpoint and from what was discussed during the paper. Yet when reviewed from politico-legal or legal-economic standpoints, then UN is *de facto* the legal tinder and the source of all the subsequent legislature concerning development cooperation. The EU, OECD and Republic of Finland follow UN resolutions even though they are “only” recommendations.

After dropping down from the Constitution level into State budgeting enactments, the mischief begins. The State Budget Act and Decree start forming an elusive and ornate web of duties, obligations and definitions called the performance guidance that are difficult to decipher and to wield. Critique of performance guidance is heard in both the State administration and the academic world. To understand the logic behind these important norms, you require a 125 page Manual of Performance Guidance that was published over ten years ago. This hardly seems rational, coherent and predictable law-making when in auditing and evaluation science performance guidance can be illustrated with a mere flowchart (the Input-Output model). This grand performance rationale was even described in one simple sentence by Meklin: “Doing things the right way<sup>221</sup>”.

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<sup>220</sup> “What are the relevant legal norms concerning the control of the Ministry for Foreign Affairs of Finland’s development cooperation appropriations at the state and ministry levels?”

<sup>221</sup> *Supra* note 128.



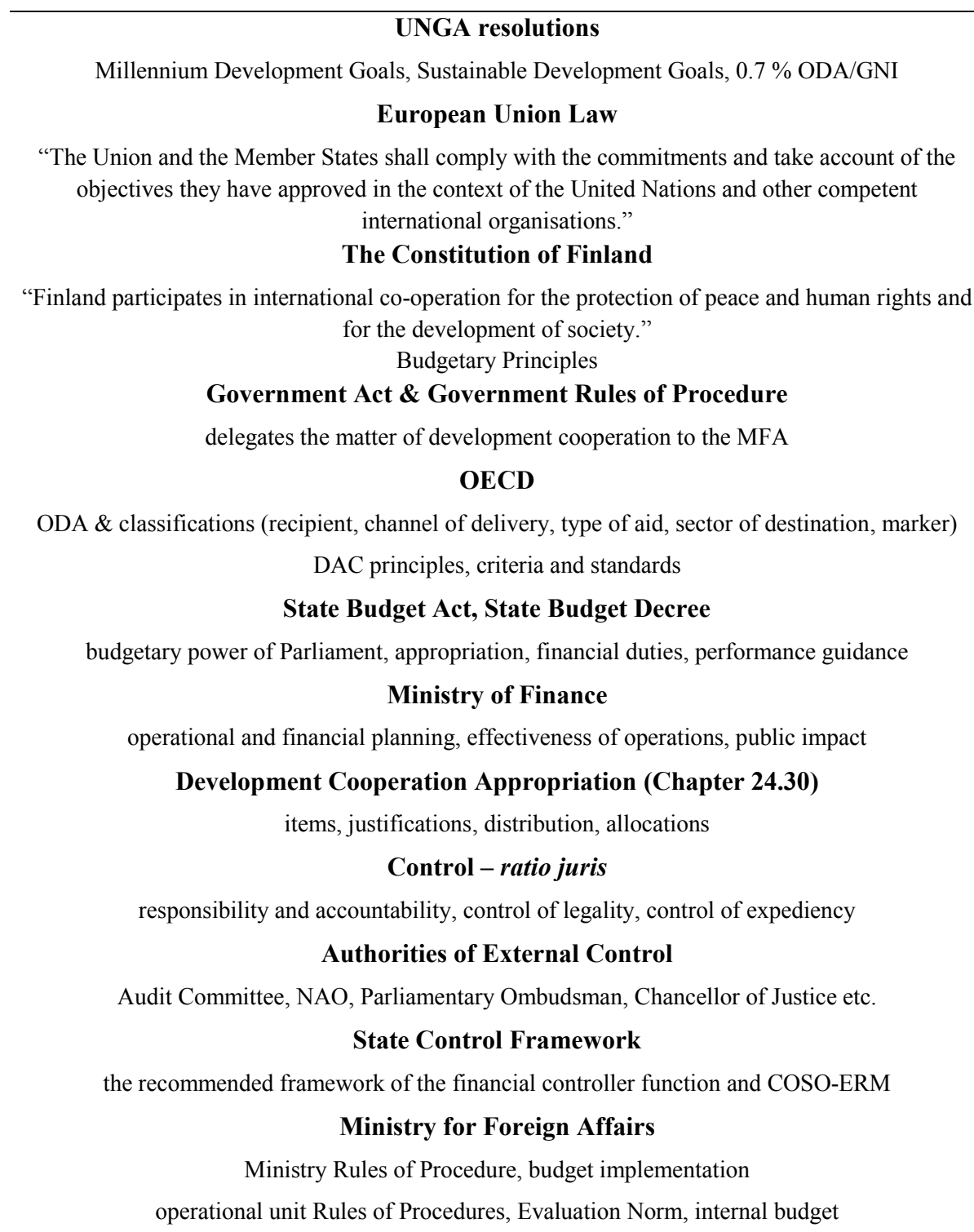


Figure 5 Systematization of Development Cooperation Control in Finland

We then turned our eye into actual control. According to the thesis, the legal system of development cooperation control is fragmented and shrouded in layers that do not fit together. When hard law begins turning into soft law, the coherency of legislation also declines. Definite bridges of law are few and far between. Multiple different organs operate on the same turf and

they employ different frameworks and guidance. At the same time, it is the wish of the legislator and the executive to harmonize control and risk management in a uniform fashion. For example, it is the duty of the Government's financial controller function to supervise and organize the arrangement of internal control. Yet the regulations of the MFA do not refer to the financial controller function's recommendations in any way. On the other hand, Development Evaluation Unit is obligated by internal regulations to follow OECD standards in its evaluative work.

Thus, harmonization and uniformity is not impossible. But apparently no entity has had the will to enforce the frameworks of control under their command. So far most of the control legislation seems to be on the softer side of soft law i.e. recommendations and standards. Only OECD seems to have such a credibility that their standards are followed to the letter. The problem and risk with fragmenting law and a bundle of frameworks spiralling out of control is that the true power of legislation and budgeting might not stay in the hands of the legislator and the people. If the money of the people is transferred abroad and used on foreign soil, then the people should decide how its use is controlled. The problem of 'control adrift' can be returned straight to the Constitution of Finland section 2(1): The powers of the State in Finland are vested in the people, who are represented by the Parliament. Some of the empirical politico-economic notions<sup>222</sup> and the large geographical and sectoral dispersion of foreign aid funding support the observation that control is not at its optimal level.

I was also forced to duel with the normative-theoretical border of hard law and soft law. Even though this kind of research was not the planned direction, the binding tier of legal sources could not be just left aside. Thus, it is impossible to say at what point does formal binding law stops and soft law starts just on the strength of this paper. For example, does performance guidance exert a true duty to the public sector or is it just fancy word play? Chinkin was quoted saying that soft law should "contain vague and imprecise terms<sup>223</sup>". With this in mind, performance guidance and control frameworks definitely belong to soft law.

Personally, the thesis was a leap of faith into the unknown. I knew that State assets are controlled and that there would be legal links to ascertain the nature of this control. But I did not know how deep I would have to dig in order to find the correct chain of provisions. For example, at an early point in the thesis I held an idea of incorporating the prevention of

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<sup>222</sup> *Supra* notes 216–218.

<sup>223</sup> *Supra* note 40.

corruption into the theme of control as well. This idea had to be scrapped immediately when it became clear that the subject at hand was far larger than was envisioned.

Nonetheless, in the view of the author, the research plan was carried out. The legal nature of controlling development cooperation in Finland was mapped out even though the cartography might not be as concrete in some places as would be optimal. But this only serves as reminder of the main objective of a thesis: The objective to school the author in scientific research. Every failure of this thesis has ricocheted as new knowledge and wisdom. Another personal goal was to mature up and start interpreting statutes more on my own rather than relying purely on past research. A thesis should connect with contemporary research regarding its field, but in the end these are just interpretations of law by humans (that tend to err).

The subject of the paper could be expanded into multiple directions in future studies. Each of the analysis chapters encompass a specific set that could form a dissertation with deeper exploration. For example, the international law connections in development cooperation between the UN, EU and OECD or the more detailed study of MFA's control measures would serve a fruitful base for possible future research. The normative aspects of development cooperation law (or law of ODA, as Philip Dann puts it) and especially the boundary of soft law and hard law is in a clear need of definition in relation to Finnish jurisdiction. A more empirical or interdisciplinary approach of this paper's subject might additionally be beneficial e.g. research of development cooperation norms with economical tools. The SDGs<sup>224</sup> and the ever growing pressure on the public economy will be provide an ample amount of new material to explore for years to come.

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<sup>224</sup> UNGA Resolution 70/1: Transforming our world: the 2030 Agenda for Sustainable Development.

## 6 Appendix 1

Table 10 Internal Budget of Item 24.30.66 (€) 2015<sup>225</sup>

| Allocation        | Internal Budget 4.2.2015                                 | Appropriation<br>2015     | Deferred from<br>2014    | Deferred from<br>2013    | Appropriation<br>sum      |
|-------------------|--|---------------------------|--------------------------|--------------------------|---------------------------|
| <b>24.30.66</b>   | <b>Actual development cooperation</b>                    | <b>797,622,000</b>        | <b>275,909,714</b>       | <b>114,589,135</b>       | <b>1,188,120,849</b>      |
| <b>24.30.66.1</b> | <b>Multilateral development cooperation</b>              | <b>268,568,513</b>        | <b>55,857,397</b>        | <b>15,269,381</b>        | <b>339,695,292</b>        |
|                   | <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>          | <b><u>264,159,682</u></b> | <b><u>55,678,110</u></b> | <b><u>15,114,301</u></b> | <b><u>334,952,094</u></b> |
|                   | Unit for Development Policy (KEO-40)                     | 101,350,000               | 122,951                  | 0                        | 101,472,951               |
|                   | Unit for Development Financing Institutions (KEO-50)     | 148,725,682               | 28,691,481               | 4,153,802                | 181,570,965               |
|                   | Unit for International Environmental Policy (KEO-60)     | 7,084,000                 | 26,863,679               | 10,960,499               | 44,908,178                |
|                   | Unit for Humanitarian Assistance (KEO-70)                | 7,000,000                 | 0                        | 0                        | 7,000,000                 |
|                   | <b><u>DEPARTMENT FOR EXTERNAL ECONOMIC RELATIONS</u></b> | <b><u>610,000</u></b>     | <b><u>2,171</u></b>      | <b><u>337</u></b>        | <b><u>612,508</u></b>     |
|                   | Trade Policy Unit (TUO-10)                               | 610,000                   | 2,171                    | 337                      | 612,508                   |
|                   | <b><u>POLITICAL DEPARTMENT</u></b>                       | <b><u>2,500,000</u></b>   | <b><u>150,000</u></b>    | <b><u>150,000</u></b>    | <b><u>2,800,000</u></b>   |
|                   | Unit for Human Rights Policy (POL-40)                    | 2,500,000                 | 150,000                  | 150,000                  | 2,800,000                 |
|                   | FREE (UNDIVIDED)   | 1,298,831                 | 27,116                   | 4,743                    | 1,330,690                 |

<sup>225</sup> HEL7W0060-1, translation and minor modifications by the author.

|              |  |                           |                          |                          |                           |
|--------------|--|---------------------------|--------------------------|--------------------------|---------------------------|
| 24.30.66.2   | Country-specific and regional development cooperation                        | 231,435,000               | 121,796,108              | 74,207,729               | 427,438,837               |
| 24.30.66.2.1 | Country-specific and regional development cooperation                        | 218,235,000               | 108,836,108              | 61,447,729               | 388,518,837               |
|              | <b><u>DEPARTMENT FOR AFRICA AND THE MIDDLE EAST AND ITS MISSIONS SUM</u></b> | <b><u>136,600,000</u></b> | <b><u>54,876,368</u></b> | <b><u>35,850,771</u></b> | <b><u>227,327,139</u></b> |
|              | <b><u>DEPARTMENT FOR AFRICA AND THE MIDDLE EAST SUM</u></b>                  | <b><u>131,260,000</u></b> | <b><u>49,908,739</u></b> | <b><u>33,144,812</u></b> | <b><u>214,313,551</u></b> |
|              | <b><u>ALI-10 AND ITS MISSIONS SUM</u></b>                                    | <b><u>20,000,000</u></b>  | <b><u>5,260,792</u></b>  | <b><u>6,167,389</u></b>  | <b><u>31,428,181</u></b>  |
|              | Unit for the Middle East and Africa (ALI-10)                                 | 19,060,000                | 4,449,868                | 5,715,963                | 29,225,831                |
|              | <b><u>MISSIONS OF ALI-10</u></b>   | <b><u>940,000</u></b>     | <b><u>810,925</u></b>    | <b><u>451,426</u></b>    | <b><u>2,202,350</u></b>   |
|              | Damascus   | 85,000                    | 0                        | 220,000                  | 305,000                   |
|              | Cairo (Egypt)  | 375,000                   | 446,574                  | 62,177                   | 883,751                   |
|              | Rabat  | 100,000                   | 94,350                   | 15,937                   | 210,287                   |
|              | Ramallah   | 230,000                   | 150,000                  | 38,312                   | 418,312                   |
|              | Riad   | 150,000                   | 30,000                   | 0                        | 180,000                   |
|              | Tel Aviv   | 0                         | 70,000                   | 35,000                   | 105,000                   |
|              | Tunis  | 0                         | 20,000                   | 80,000                   | 100,000                   |
|              | <b><u>ALI-20 AND ITS MISSIONS SUM</u></b>                                    | <b><u>72,600,000</u></b>  | <b><u>24,201,830</u></b> | <b><u>13,962,816</u></b> | <b><u>110,764,646</u></b> |
|              | Unit for Eastern and Western Africa (ALI-20)                                 | 70,300,000                | 23,093,755               | 13,374,515               | 106,768,270               |
|              | <b><u>MISSIONS OF ALI-20</u></b>   | <b><u>2,300,000</u></b>   | <b><u>1,108,075</u></b>  | <b><u>588,301</u></b>    | <b><u>3,996,376</u></b>   |
|              | Addis Abeba  | 300,000                   | 250,000                  | 177,119                  | 727,119                   |
|              | Dar es Salaam  | 600,000                   | 306,981                  | 70,306                   | 977,287                   |
|              | Cairo (Sudan)  | 300,000                   | 0                        | 265,060                  | 565,060                   |
|              | Nairobi  | 1,100,000                 | 551,094                  | 75,816                   | 1,726,910                 |

|   |                          |                          |                          |                           |
|---|--------------------------|--------------------------|--------------------------|---------------------------|
| <b><u>ALI-30 AND ITS MISSIONS SUM</u></b>                               | <b><u>44,000,000</u></b> | <b><u>25,413,745</u></b> | <b><u>15,720,566</u></b> | <b><u>85,134,312</u></b>  |
| Unit for Southern Africa (ALI-30)                                       | 41,900,000               | 22,365,116               | 14,054,334               | 78,319,450                |
| <b><u>MISSIONS OF ALI-30</u></b>  | <b><u>2,100,000</u></b>  | <b><u>3,048,629</u></b>  | <b><u>1,666,232</u></b>  | <b><u>6,814,861</u></b>   |
| Lusaka  | 1,100,000                | 1,765,431                | 628,321                  | 3,493,752                 |
| Pretoria  | 0                        | 500,000                  | 771,017                  | 1,271,017                 |
| Windhoek  | 1,000,000                | 783,198                  | 266,894                  | 2,050,092                 |
| <b><u>DEPARTMENT FOR THE AMERICAS AND ASIA AND ITS MISSIONS SUM</u></b> | <b><u>69,435,000</u></b> | <b><u>40,536,753</u></b> | <b><u>23,039,926</u></b> | <b><u>133,011,679</u></b> |
| <b><u>DEPARTMENT FOR THE AMERICAS AND ASIA SUM</u></b>                  | <b><u>67,640,000</u></b> | <b><u>39,113,521</u></b> | <b><u>22,319,287</u></b> | <b><u>129,072,808</u></b> |
| <b><u>ASA-10 AND ITS MISSIONS SUM</u></b>                               | <b><u>15,849,657</u></b> | <b><u>16,070,831</u></b> | <b><u>15,497,576</u></b> | <b><u>47,418,065</u></b>  |
| Unit for Eastern Asia and Oceania (ASA-10)                              | 15,109,657               | 15,699,334               | 15,199,625               | 46,008,616                |
| <b><u>MISSIONS OF ASA-10</u></b>  | <b><u>740,000</u></b>    | <b><u>371,498</u></b>    | <b><u>297,951</u></b>    | <b><u>1,409,448</u></b>   |
| Bangkok   | 30,000                   | 86,174                   | 56,986                   | 173,160                   |
| Hanoi   | 350,000                  | 256,921                  | 240,965                  | 847,886                   |
| Jakarta   | 300,000                  | 28,403                   | 0                        | 328,403                   |
| Beijing   | 60,000                   | 0                        | 0                        | 60,000                    |
| <b><u>ASA-30 AND ITS MISSIONS SUM</u></b>                               | <b><u>7,320,000</u></b>  | <b><u>8,202,747</u></b>  | <b><u>4,031,052</u></b>  | <b><u>19,553,800</u></b>  |
| Unit for Latin America and Caribbean (ASA-30)                           | 6,855,000                | 7,742,332                | 3,917,055                | 18,514,387                |
| <b><u>MISSIONS OF ASA 30</u></b>  | <b><u>465,000</u></b>    | <b><u>460,415</u></b>    | <b><u>113,998</u></b>    | <b><u>1,039,413</u></b>   |
| Brazil  | 100,000                  | 55,000                   | 19,918                   | 174,918                   |
| Buenos Aires  | 105,000                  | 51,555                   | 41,335                   | 197,890                   |
| Lima  | 0                        | 216,432                  | 16,827                   | 233,259                   |
| Mexico  | 200,000                  | 120,000                  | 32,128                   | 352,128                   |
| Santiago de Chile   | 60,000                   | 17,428                   | 3,790                    | 81,218                    |

|   |                          |                          |                         |                          |
|---|--------------------------|--------------------------|-------------------------|--------------------------|
| <b><u>ASA-40 AND ITS MISSIONS SUM</u></b>   | <b><u>46,265,343</u></b> | <b><u>16,263,174</u></b> | <b><u>3,511,297</u></b> | <b><u>66,039,815</u></b> |
| Unit for South Asia (ASA-40)  | 45,675,343               | 15,671,855               | 3,202,607               | 64,549,805               |
| <b><u>MISSIONS OF ASA-40</u></b>  | <b><u>590,000</u></b>    | <b><u>591,319</u></b>    | <b><u>308,690</u></b>   | <b><u>1,490,010</u></b>  |
| Kabul   | 470,000                  | 253,815                  | 96,049                  | 819,865                  |
| Kathmandu   | 0                        | 170,000                  | 173,936                 | 343,936                  |
| Yangon  | 120,000                  | 0                        | 0                       | 120,000                  |
| Roving Ambassador for South Asia (ASA-11)   | 0                        | 167,504                  | 38,705                  | 206,209                  |
| <b><u>DEPARTMENT FOR EUROPE AND ITS MISSIONS SUM</u></b>                                  | <b><u>1,500,000</u></b>  | <b><u>2,504,574</u></b>  | <b><u>74,284</u></b>    | <b><u>4,078,858</u></b>  |
| <b><u>DEPARTMENT FOR EUROPE</u></b>   | <b><u>1,200,000</u></b>  | <b><u>2,421,985</u></b>  | <b><u>731</u></b>       | <b><u>3,622,716</u></b>  |
| Unit for EU Enlargement and Western Balkans (EUR-40)                                      | 1,200,000                | 2,421,985                | 731                     | 3,622,716                |
| <b><u>MISSIONS OF DEPARTMENT FOR EUROPE</u></b>   | <b><u>300,000</u></b>    | <b><u>82,589</u></b>     | <b><u>73,553</u></b>    | <b><u>456,142</u></b>    |
| Ankara  | 0                        | 0                        | 101                     | 101                      |
| Belgrade  | 0                        | 0                        | 64,029                  | 64,029                   |
| Pristina  | 300,000                  | 82,589                   | 9,423                   | 392,012                  |
| <b><u>DEPARTMENT FOR RUSSIA, EASTERN EUROPE AND CENTRAL ASIA AND ITS MISSIONS SUM</u></b> | <b><u>10,700,000</u></b> | <b><u>6,202,313</u></b>  | <b><u>2,472,862</u></b> | <b><u>19,375,175</u></b> |
| <b><u>DEPARTMENT FOR RUSSIA, EASTERN EUROPE AND CENTRAL ASIA</u></b>                      | <b><u>10,025,000</u></b> | <b><u>5,842,008</u></b>  | <b><u>2,324,308</u></b> | <b><u>18,191,316</u></b> |
| Unit for Eastern Europe and Central Asia (ITÄ-20)   | 9,525,000                | 5,823,442                | 2,324,308               | 17,672,751               |
| Vienna / OSCE   | 500,000                  | 18,566                   | 0                       | 518,566                  |

|                     |  |                          |                          |                          |                          |
|---------------------|--|--------------------------|--------------------------|--------------------------|--------------------------|
|                     | <b><u>MISSIONS OF DEPARTMENT FOR RUSSIA, EASTERN EUROPE AND CENTRAL ASIA</u></b>                     | <b><u>675,000</u></b>    | <b><u>360,305</u></b>    | <b><u>148,554</u></b>    | <b><u>1,183,859</u></b>  |
|                     | Astana   | 150,000                  | 66,000                   | 15,786                   | 231,786                  |
|                     | Bucharest  | 100,000                  | 47,448                   | 39,084                   | 186,532                  |
|                     | Roving Ambassador for South Caucasus (ITÄ-22)  | 150,000                  | 45,103                   | 13,767                   | 208,870                  |
|                     | Roving Ambassador for Central Asia (ITÄ-21)  | 100,000                  | 93,754                   | 4,590                    | 198,344                  |
|                     | Kiev   | 175,000                  | 58,000                   | 36,514                   | 269,514                  |
|                     | Vilnius  | 0                        | 50,000                   | 38,813                   | 88,813                   |
|                     | FREE (UNDIVIDED)   | 0                        | 4,716,100                | 9,886                    | 4,725,986                |
| <b>24.30.66.2.2</b> | <b>Joint project expenditure with the UK's Department for International Development (DFID)</b>       | <b>12,300,000</b>        | <b>11,500,000</b>        | <b>11,900,000</b>        | <b>35,700,000</b>        |
|                     | <b><u>DEPARTMENT FOR AFRICA AND THE MIDDLE EAST</u></b>  | <b><u>12,300,000</u></b> | <b><u>11,500,000</u></b> | <b><u>11,900,000</u></b> | <b><u>35,700,000</u></b> |
|                     | Unit for Southern Africa (ALI-30)  | 12,300,000               | 11,500,000               | 11,900,000               | 35,700,000               |
| <b>24.30.66.2.4</b> | <b>Joint project expenditure with the Austrian Development Agency (ADA)</b>                          | <b>500,000</b>           | <b>1,000,000</b>         | <b>0</b>                 | <b>1,500,000</b>         |
|                     | <b><u>DEPARTMENT FOR AFRICA AND THE MIDDLE EAST</u></b>  | <b><u>500,000</u></b>    | <b><u>1,000,000</u></b>  | <b><u>0</u></b>          | <b><u>1,500,000</u></b>  |
|                     | Unit for Southern Africa (ALI-30)  | 500,000                  | 1,000,000                | 0                        | 1,500,000                |
| <b>24.30.66.2.7</b> | <b>Joint project expenditure with Norway's Ministry of Foreign Affairs</b>                           | <b>400,000</b>           | <b>460,000</b>           | <b>810,000</b>           | <b>1,670,000</b>         |
|                     | <b><u>DEPARTMENT FOR AFRICA AND THE MIDDLE EAST</u></b>  | <b><u>400,000</u></b>    | <b><u>460,000</u></b>    | <b><u>460,000</u></b>    | <b><u>1,320,000</u></b>  |
|                     | Unit for Eastern and Western Africa (ALI-20)   | 400,000                  | 460,000                  | 460,000                  | 1,320,000                |
|                     | <b><u>DEPARTMENT FOR THE AMERICAS AND ASIA</u></b>   | <b><u>0</u></b>          | <b><u>0</u></b>          | <b><u>350,000</u></b>    | <b><u>350,000</u></b>    |
|                     | Unit for Latin America and Caribbean (ASA-30)  |                          |                          | 350,000                  | 350,000                  |
| <b>24.30.66.2.8</b> | <b>Joint project expenditure with Germany's Gesellschaft für Internationale Zusammenarbeit (GIZ)</b> | <b>0</b>                 | <b>0</b>                 | <b>50,000</b>            | <b>50,000</b>            |
|                     | <b><u>DEPARTMENT FOR THE AMERICAS AND ASIA</u></b>   | <b><u>0</u></b>          | <b><u>0</u></b>          | <b><u>50,000</u></b>     | <b><u>50,000</u></b>     |
|                     | Unit for Latin America and Caribbean (ASA-30)  | 0                        | 0                        | 50,000                   | 50,000                   |



|                   |  |                          |                          |                         |                          |
|-------------------|--|--------------------------|--------------------------|-------------------------|--------------------------|
| <b>24.30.66.3</b> | <b>European Development Fund</b>                         | <b>25,157,587</b>        | <b>27,761,844</b>        | <b>0</b>                | <b>52,919,431</b>        |
|                   | <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>          | <b><u>25,157,587</u></b> | <b><u>27,761,844</u></b> | <b><u>0</u></b>         | <b><u>52,919,431</u></b> |
|                   | Unit for Development Policy (KEO-10)                     | 25,157,587               | 27,761,844               | 0                       | 52,919,431               |
| <b>24.30.66.4</b> | <b>Non-country specific development cooperation</b>      | <b>56,499,900</b>        | <b>23,360,191</b>        | <b>7,705,386</b>        | <b>87,565,477</b>        |
|                   | <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>          | <b><u>37,015,000</u></b> | <b><u>17,290,432</u></b> | <b><u>3,242,460</u></b> | <b><u>57,547,892</u></b> |
|                   | Unit for Development Policy (KEO-10)                     | 5,920,000                | 4,697,032                | 160,123                 | 10,777,155               |
|                   | Unit for Sectoral Policy (KEO-20)                        | 1,000,000                | 2,636,693                | 1,253,615               | 4,890,308                |
|                   | Unit for Civil Society (KEO-30)                          | 0                        | 500,000                  | 0                       | 500,000                  |
|                   | Unit for UN Development Issues (KEO-40)                  | 9,610,000                | 262,963                  | 0                       | 9,872,963                |
|                   | Unit for Development Financing Institutions (KEO-50)     | 4,000,000                | 4,000,000                | 1,708,806               | 9,708,806                |
|                   | Unit for International Environmental Policy (KEO-60)     | 10,485,000               | 3,342,614                | 114,920                 | 13,942,534               |
|                   | Unit for Humanitarian Assistance (KEO-70)                | 6,000,000                | 1,851,130                | 4,997                   | 7,856,127                |
|                   | <b><u>DEPARTMENT FOR EXTERNAL ECONOMIC RELATIONS</u></b> | <b><u>8,470,000</u></b>  | <b><u>4,560,000</u></b>  | <b><u>3,294,000</u></b> | <b><u>16,324,000</u></b> |
|                   | Trade Unit (TUO-10)                                      | 7,900,000                | 4,045,000                | 2,779,000               | 14,724,000               |
|                   | Market Access Unit (TUO-20)                              | 570,000                  | 515,000                  | 515,000                 | 1,600,000                |
|                   | <b><u>LEGAL SERVICE</u></b>                              | <b><u>350,000</u></b>    | <b><u>150,000</u></b>    | <b><u>0</u></b>         | <b><u>500,000</u></b>    |
|                   | Unit for Public International Law (OIK-10)               | 350,000                  | 150,000                  | 0                       | 500,000                  |
|                   | <b><u>POLITICAL DEPARTMENT</u></b>                       | <b><u>10,464,900</u></b> | <b><u>558,759</u></b>    | <b><u>545,728</u></b>   | <b><u>11,569,387</u></b> |
|                   | Unit for Arms Control (POL-20)                           | 2,160,000                | 134,914                  | 362,199                 | 2,657,114                |
|                   | Unit for Human Rights Policy (POL-40)                    | 3,900,000                | 2,845                    | 74,944                  | 3,977,789                |
|                   | Unit for UN and General Global Affairs (POL-50)          | 4,404,900                | 421,000                  | 108,585                 | 4,934,485                |

|  |   |                   |                  |                  |                   |
|--|---|-------------------|------------------|------------------|-------------------|
| <b><u>DEPARTMENT FOR COMMUNICATIONS</u></b>                                |   | <u>200,000</u>    | <u>400,000</u>   | <u>200,000</u>   | <u>800,000</u>    |
| Unit for Development Communications (VIE-30)                               |   | 200,000           | 400,000          | 200,000          | 800,000           |
| FREE (UNDIVIDED)   |   | 0                 | 401,000          | 423,198          | 824,198           |
| <b>24.30.66.5</b>  | <b>Humanitarian assistance</b>  | <b>74,800,000</b> | <b>8,027,103</b> | <b>0</b>         | <b>82,827,103</b> |
| <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>                            |   | <u>74,800,000</u> | <u>8,027,103</u> | <u>0</u>         | <u>82,827,103</u> |
| Unit for Humanitarian Assistance (KEO-70)                                  |   | 74,800,000        | 8,027,103        | 0                | 82,827,103        |
| <b>24.30.66.6</b>  | <b>Planning, support functions and communication of development cooperation</b> | <b>7,961,000</b>  | <b>5,129,745</b> | <b>2,953,255</b> | <b>16,044,000</b> |
| <b><u>ADMINISTRATIVE SERVICES</u></b>                                      |   | <u>55,000</u>     | <u>110,000</u>   | <u>20,558</u>    | <u>185,558</u>    |
| Information Services Unit (HAL-41)   |   | 55,000            | 110,000          | 20,558           | 185,558           |
| <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>                            |   | <u>5,976,000</u>  | <u>4,036,437</u> | <u>2,362,340</u> | <u>12,374,777</u> |
| Unit for Development Policy (KEO-10)                                       |   | 4,035,000         | 1,614,769        | 1,270,595        | 6,920,363         |
| Unit for Sectoral Policy (KEO-20)  |   | 1,331,000         | 1,599,764        | 344,758          | 3,275,522         |
| Unit or UN Development Issues (KEO-40)                                     |   | 50,000            | 60,000           | 154,844          | 264,844           |
| Unit for Development Financing Institutions (KEO-50)                       |   | 60,000            | 60,000           | 60,000           | 180,000           |
| Unit for International Environmental Policy (KEO-60)                       |   | 50,000            | 30,588           | 356              | 80,944            |
| Unit for Administrative and Legal Development Cooperation Matters (KEO-80) |   | 450,000           | 671,316          | 531,788          | 1,653,104         |
| <b><u>DEPARTMENT FOR EXTERNAL ECONOMIC RELATIONS</u></b>                   |   | <u>30,000</u>     | <u>40,000</u>    | <u>20,596</u>    | <u>90,596</u>     |
| Trade Unit (TUO-10)  |   | 30,000            | 40,000           | 20,596           | 90,596            |
| <b><u>DEPARTMENT FOR COMMUNICATIONS</u></b>                                |   | <u>1,700,000</u>  | <u>943,308</u>   | <u>208,861</u>   | <u>2,852,169</u>  |
| Unit for Development Communications (VIE-30)                               |   | 1,400,000         | 912,438          | 204,061          | 2,516,499         |
| Unit for Communications on Asia, Africa and the Americas (VIE-40)          |   | 300,000           | 30,870           | 4,800            | 335,670           |
| FREE (UNDIVIDED)   |   | 200,000           |                  | 340,900          | 540,900           |

|                   |  |                           |                          |                          |                           |
|-------------------|--|---------------------------|--------------------------|--------------------------|---------------------------|
| <b>24.30.66.7</b> | <b>Evaluation and internal audit of development cooperation</b>                    | <b>2,700,000</b>          | <b>2,181,046</b>         | <b>771,425</b>           | <b>5,652,471</b>          |
|                   | <b><u>LEADERSHIP OF THE MINISTRY</u></b>   | <b><u>2,000,000</u></b>   | <b><u>1,844,541</u></b>  | <b><u>771,425</u></b>    | <b><u>4,615,966</u></b>   |
|                   | Development Evaluation Unit (EVA-11)   | 2,000,000                 | 1,844,541                | 771,425                  | 4,615,966                 |
|                   | <b><u>UNIT FOR INTERNAL AUDIT</u></b>  | <b><u>700,000</u></b>     | <b><u>336,505</u></b>    | <b><u>0</u></b>          | <b><u>1,036,505</u></b>   |
|                   | Unit for Internal Audit (STY-00)   | 700,000                   | 336,505                  | 0                        | 1,036,505                 |
| <b>24.30.66.8</b> | <b>Support to development cooperation conducted by civil society organizations</b> | <b>114,000,000</b>        | <b>16,361,182</b>        | <b>3,595,073</b>         | <b>133,956,255</b>        |
|                   | <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>                                    | <b><u>114,000,000</u></b> | <b><u>16,361,182</u></b> | <b><u>3,595,073</u></b>  | <b><u>133,956,255</u></b> |
|                   | Unit for Civil Society (KEO-30)  | 114,000,000               | 16,361,182               | 3,595,073                | 133,956,255               |
|                   | FREE (UNDIVIDED)   | 0                         | 0                        | 0                        | 0                         |
| <b>24.30.66.9</b> | <b>Concessional credits</b>  | <b>16,500,000</b>         | <b>15,435,099</b>        | <b>10,086,886</b>        | <b>42,021,984</b>         |
|                   | <b><u>DEPARTMENT FOR DEVELOPMENT POLICY</u></b>                                    | <b><u>16,500,000</u></b>  | <b><u>15,435,099</u></b> | <b><u>10,086,886</u></b> | <b><u>42,021,984</u></b>  |
|                   | Department for Development Policy (KEO-50)   | 16,500,000                | 15,435,099               | 10,086,886               | 42,021,984                |