

FACT SHEET D.4

HUMANITARIAN PROCUREMENT CENTRES

applicable to NGO's, International Organisations, UN, Specialised Agencies of Member States

Introduction

This Fact Sheet reproduces the Chapter on Humanitarian Procurement Centres (hereafter HPCs) of DG ECHO Humanitarian Aid Procurement Guidelines. It cancels and replaces previous Fact Sheets on HPCs which will no longer be applicable from 01/xx/2009. The presentation of this information in a Fact Sheet has been maintained in order to facilitate its access and distribution among interested parties. Any changes in the Guidelines will be introduced in parallel in this Fact Sheet.

This is the first review of the documentation produced by DG ECHO on HPCs since the entry into force of the 2008 Framework Partnership Agreement (FPA). It results from the experience gained on the previous FPA and the findings and recommendations of the verifications and audits carried out by DG.

The modifications introduced will:

- Enlarge and clarify the concept of HPCs and other related concepts;
- Complete the legal framework with the definition of the rights and obligations of the different parties (HPCs, humanitarian organisations and DG ECHO) intervening in the process;
- Complete the concept of eligible costs, including administrative fees and overheads and define the information to be provided in the invoices issued by HPCs;
- Introduce a new assessment and monitoring procedure for HPCs.

DG ECHO policy aims, as part of a wider objective of guaranteeing safer and more efficient procurement, to develop further the concept of HPCs and to facilitate humanitarian organisations' recourse to their services.

In order to guarantee common standards of behaviour across the different HPCs a Charter of Humanitarian Procurement Centres has been drafted. The Charter sets out a number of enforceable commitments subscribed by HPCs. DG ECHO will be the supervision authority of the Charter, ensuring its application.

DG ECHO intends to make the HPCs and their respective sectors of specialisation and services better known to its Partner organisations and other donors. Through this pro-active approach, DG ECHO intends not only to facilitate efficient and safe procurement procedures for the Partners, but also to contribute to the reduction of costs related to procurement overall.

The list of organisations recognised as HPCs is available on DG ECHO's website (cf. http://ec.europa.eu/echo/about/actors/procurement_en.htm) and is updated regularly.

1) What is a Humanitarian Procurement Centre?

a) Characteristics of an HPC

HPCs are “*not for profit organisations specialised in the technical and commercial management of supplies and services necessary for the implementation of humanitarian Actions. They can provide Technical Assistance in procurement to Contracting Authorities or supply pre-established stocks, purchasing or logistics capacity*”¹.

In respect to their legal personality, HPCs can be:

- Not-for-profit, autonomous organisations with legal personality established accordingly on the basis of the national legislation of the country of establishment. The country of establishment can be outside the European Union.
- Specialised procurement and logistical departments of International Organisations offering supply chain management related services to other humanitarian organisations ensuring equal treatment and no discrimination.²

Having regard to the type of services that they usually provide, HPCs can be:

- *Stockholding*: Certain HPCs hold stocks of supplies which they can make directly available to Partners.
- *Non-stockholding*: Other HPCs do not hold own stocks but purchase the supplies on behalf of the client. Such HPCs have often concluded framework contracts with suppliers.
- *Service providing*: HPCs may also offer consultancy services regarding procurement. They may advise the organisation of tender procedures, custom clearances, quality assurance, and the like. They may also organise procurement procedures for Partners but without purchasing on behalf of the client organisation.

HPCs can provide a combination of these services. It should be also noted that while some HPCs are specialised in a given type of products (for instance, medicines and medical equipment) others may offer a wider choice of products and services.

In any case, the main characteristics that define a HPC are:

- Not-for profit organisation with the administrative and financial capacity to support the core functions of the organisation, ensuring that procurement-related activities and service providing are performed in accordance with the best practices in the sector;
- The organisation must have as a core function the management of the supply chain either for specific areas of trade (medicines, food aid, etc.) or for the general supply of relief items and humanitarian aid services;
- The organisation provides supplies, consultancy and procurement related services to all humanitarian organisations on an open and equal-treatment basis.

¹ Annex IV of the FPA 2008, paragraph 1.15.

² **NB**, specialised procurement departments of International Organisations cannot include overheads or similar costs in internal invoices, this is when procuring on behalf of their own organisation or when providing services to other departments of the same organisation. Under no circumstances surpluses generated from the operation of specialised departments can be used for funding, running or operational costs of other services of its organisation. See further Section 4 of the Fact Sheet.

b) The following entities are not HPCs:

- *Specialised supply chain management departments* (hereafter called **procurement departments**) of humanitarian organisations procuring mainly on behalf of their own organisation and they don't have independent legal personality. Procurement departments may organise joint procurement procedures or establish other forms of contingent collaboration with other organisations; this does not qualify them as HPC, however.

Should be any invoicing between departments of the same organisation, no financial profit or surpluses can be generated in these transactions and overhead costs can not be charged (only real costs can be charged).

- *Related Procurement Centres*. A Related Procurement Centre (hereafter called **RPC**) is a professional organisation with independent legal personality offering supply chain management related services, including pre-constituted stocks, to several humanitarian organisations on the basis of exclusivity agreements, membership or other selective criteria. Organisations benefiting from the services of a RPC are called associated organisations and, normally, are bound to the RPC by a *structural relation*³. Therefore, RPCs may not be open to all humanitarian organisations nor apply equal treatment to all its clients.

In most cases the management of RPC are controlled by its associated organisations which decide its operational strategy, internal organisation, financing, etc. If a RPC generates a financial surplus this surplus cannot be used for funding, running or operational costs of the associated organisations.

- When a **RPC provides supplies or services to its associated humanitarian organisations on not-for-profit basis** DG ECHO considers it equivalent to a *procurement department*.

The invoices paid to a RPC by its associated organisations are equivalent to internal transactions within departments of the same organisation. No financial profit or surpluses should be generated in these transactions and overhead costs can not be charged (only real costs can be charged). Administrative fees are eligible if they correspond to real costs⁴.

Associated organisations do not have to launch a competitive tender procedure for awarding a contract to a RPC and can proceed on the basis of a negotiated procedure with a single tender when the subject of contract is either the supply of pre-established stocks or supplies or services provided on the basis of framework contracts concluded by the RPC with third parties.

On the other hand, should the RPC need to launch an ad hoc tender procedure for serving the procurement order of an associated organisation in the Framework of a Community funded action, the relevant procurement rules and procedures applicable to the associated organisation are to be followed. It will be the responsibility of the DG ECHO Partner organisation to inform the RPC and to ensure that the correct procedures have been applied.

- When **non-associated humanitarian organisations wish to engage the services of a RPC** the normal procurement procedures have to be followed and these humanitarian organisations shall award contracts to RPC in accordance with the applicable tender procedure.

³ Structural relations are those linking different autonomous organisations sharing core values and mission, such organisations members of the same "family" or members of the same "movement". Relations between RPC and its associated organisations have a long-term perspective rather than ad hoc basis.

⁴ Cf. section 4 a) of this Fact Sheet for a complete presentation of the eligible costs and the definition of the different concepts.

- *Buying Agent* (Annex IV, paragraph 1.16) is a commercial, profit-making entity providing technical assistance in the field of supply chain management (in particular procurement) to humanitarian organisations on the basis of a service contract. Organisations wishing to recourse to this type of service provider should establish a long term relation on the basis of a Framework contract awarded following a competitive procedure.

c) Overview of supply chain management options

The different supply chain management options at a glance

	Procurement Department	Related Procurement Centre	Humanitarian Procurement Centre	Buying Agent
Legal personality	No	Yes	Yes	Yes
Equal treatment, open to all	No	No	Yes	Yes
Autonomy	No	No/Partial	Yes	Yes
Profit Making	No	No/Yes	No	Yes
Competitive Tender	No	Single tender /Yes	Single tender	Yes

2) Award of contracts to Humanitarian Procurement Centres

When a DG ECHO Partner organisation wishes to award a contract to an HPC, the Partner does not have to conduct an in-depth analysis of the functioning and financial viability of the HPC. Such analysis has been conducted by DG ECHO and has entailed the validation as an HPC.

Partners may pass orders **without recourse to competitive tendering or publication** irrespective of the amount of the contract. Partners can apply to a negotiated procedure with a single tender to award the contract to an HPC.

Partners should avoid additional costs such as bank guarantees, payment interests, etc. which will not be eligible for EU-funding.

a) Principles ruling the award of contracts to HPCs:

- Contracts awarded to HPCs must comply with the **principle of economy**. The principle of economy requires that the resources by the HPC shall be made available in due time, in appropriate quantity and quality and at the best price.
- Respect of the **principle of due diligence**. DG ECHO Partners are responsible in any case for the execution and coordination of all contracted activities. To this end they must exercise the necessary degree of care and diligence when procuring supplies and services from an HPC.
- Like with any other procurement procedure, the award of contracts has to be free from any interference due to **conflict of interest, fraud, corruption, collusion and coercive practices**. In this respect, humanitarian organisations and HPCs have the duty to immediately inform DG

ECHO of any irregularities encountered in the procurement process and take the necessary actions to redress the situation.

- The compliance with the provisions foreseen in the Charter of HPCs such as **international standards and quality assurance** of products and services provided by HPCs has to be assured. In particular, the **procurement of medicines** and medical equipment and **food** shall be in accordance with Annex IV of the FPA and the Humanitarian Aid Procurement Guidelines.
- In order to ensure the compliance with the **principle of transparency**, and where appropriate, the Partner shall mention the EU-funding to the HPC when awarding a contract and, for A-control mechanism agreements, mention the award of a contract to an HPC in Annex A of the Single Form. The final reports shall also identify every time those contracts awarded to an HPC.

b) Provisions to be included in all contracts between humanitarian organisations and HPCs

Contracts signed between the HPC and the humanitarian organisations have to lay down, at least, the following:

- The subject, the costs, the Specific conditions and the General conditions applicable to the contract, the arrangements and time limits for delivery, acceptance and payment, provisions concerning the friendly settlement of conflicts, if possible by arbitration or similar procedures. Technical specifications have to be annexed to the contract and are part of it.
- In the Specific conditions DG ECHO Partners have to include the necessary provisions in order to ensure that the obligations imposed on their contractors by the Agreement signed with DG ECHO are correctly and fully reflected in the contracts signed with HPCs.
- It is the responsibility of both the humanitarian organisation and the HPC to guarantee that the delivered supplies or the rendered services are of satisfactory quality and in accordance with the technical description provided in the contract. Timely deliveries of the supplies and the performance of the service have also to be addressed in the contract between the humanitarian organisation and the HPC.

3) Contractual liability and supervisory powers of the Commission

The recognition by DG ECHO of a given organisation as HPC does not entail any certification of quality nor can it be presented as a system of preferred vendors. Any misrepresentation to third parties of the scope or the status of HPCs will cause the withdrawal of the recognition.

Serious or repetitive breaches of contractual obligations should be reported to DG ECHO as they contradict the commitment to safe and efficient procurement made by HPCs in the Charter of HPCs⁵ and will be sufficient ground for losing the recognition as HPC.

a) Contractual liability

Contractual relations between HPC and humanitarian organisations will be ruled by the contracts signed by them. Eventual failures to comply with the contractual obligations should be addressed on the basis of the relevant provisions of those contracts.

The HPCs have the sole responsibility for complying with their contractual obligations with third parties and will assume all liabilities derived from the performance of the contracts.

⁵ Cf. section 5 b) below on the Charter of Humanitarian Procurement Centres.

There is no contractual relation between DG ECHO and HPCs. DG ECHO will not accept any liability for failures to respect contractual obligations by HPCs.

b) Supervisory powers of the Commission

The Commission is the supervisory authority for the Charter of HPCs. In this respect, DG ECHO will assess the procedures on procurement and internal control as well as the financial viability of the candidate HPC and hold the list of signatories of the Charter.

Furthermore, DG ECHO envisages carrying out periodic verifications of each HPC, at least every two years, in order to re-assess the compliance with the criteria defining the concept of HPCs and/or to scrutinise the performance and functioning of HPCs. These periodic verification can be based on a desk review and/or by on-the-spot checks / audits. The feedback of organisations and HPCs as well as the findings of DG ECHO verifications and audits will be taken into account in order to maintain or withdraw the recognition as HPC.

The Commission may suspend the recognition of an HPC with immediate effect as a precautionary measure if information comes to its notice concerning grave infringements by the HPC of its contractual obligations, substantive irregularities or fraud, or information that puts into question elements used for the recognition of the HPC. The purpose of the suspension will be to give time to check whether the presumed situations have in fact occurred.

In case of the HPC is found responsible of grave infringements of contractual obligations, substantive irregularities or fraud the Commission will withdraw its recognition as HPC and will inform DG ECHO partner organisations accordingly.

To withdraw the recognition DG ECHO will serve a 45 days' written notice providing the grounds on which the decision is based. The HPC may request of DG ECHO to re-examine this decision, submitting whatever arguments and supporting documents DG ECHO judges pertinent within 15 days of receiving the written communication.

If the HPC fails to present any allegation, or DG ECHO does not accept the allegations confirmed by giving written consent within 15 days of receiving them, the withdrawal will take full effect.

This is without prejudice to the adoption of administrative or financial sanctions by the Commission.

4) Eligible costs

For the purpose of this fact sheet, a clear terminology has been defined and will be explained hereafter. In annex a schematic overview is attached.

Expenses incurred by the Partners for purchases of goods and services from HPCs are **direct costs**⁶ of the Action.

⁶ **Direct costs** can be defined as actual costs pertaining to the implementation of the Action and cover both the costs of goods and services delivered to beneficiaries and the costs related to the support activities required for the correct implementation of the Action.

The eligibility of costs committed with an HPC enjoys a presumption of regularity and good faith in favour of DG ECHO Partners.

As far as the quality and timeliness of the delivery of goods and/or services has been respected, DG ECHO will reimburse the costs of contracts signed by humanitarian organisations even if the validation of a given HPC is withdrawn after the contract has been signed.

HPC have to establish their prices with due regard to the principle of **non-profit**⁷. HPCs must be able to demonstrate the methodology used to establish their prices, including **mark-ups**⁸, and when relevant, **unit costs**⁹ and service costs. This methodology shall be presented as part of the recognition process and has to be validated by DG ECHO. Furthermore, it will be tested in the framework of on-the-spot verifications and audits.

HPC invoices must be established on the basis of invoices of third parties to whom the HPC has added a mark up. They can also include internal charges of the HPC for the services provided, such as reconditioning, packaging, kits assembling. Internal charges of the HPC have to correspond to the HPC normal practice and they must not vary significantly from real costs.

HPCs may also charge a **administrative fee**¹⁰ provided that the costs covered by the administrative fee have not been already included in other cost categories (no double charging) and to the extent that these costs are calculated using a verifiable method that is applied consistently and in compliance with the principle of equal treatment of humanitarian organisations. HPC may charge a administrative fee, for instance, to cover administrative costs incurred for the processing of the order of the product concerned.

Finally, the invoice of the HPC may include also a charge to cover the **overhead costs**¹¹ provided that the costs covered by overheads have not been already included in other cost categories (no double charging) and to the extent that these costs are charged consistently and in compliance with the principle of equal treatment of humanitarian organisations. HPC may charge overhead costs up to 7% of the total of the supply or service actual cost.

HPCs will not include overheads in their invoices in the following cases:

- When the overhead costs are already charged to client organisations, being included in the calculation of other concepts, such as mark-ups.
- When the HPC procures for its own or for organisations to which it is linked by structural relations

⁷ **Profit** means a surplus of receipts over the costs incurred by the HPC when delivering supplies or services to humanitarian organisations.

⁸ **Mark ups** are price increases applied by the HPC to the different supplies in order to cover its costs. Mark ups should be defined by categories or families of products taking into account the specific costs associated with the purchase and storage of the products by the HPC. Mark ups should be established with due regard to the principle of non-profit making that rules the overall functioning of an HPC.

⁹ **Unit Costs** are costs incurred by a company to produce, store and sell one unit of a particular product. Unit costs include all fixed costs (i.e. plant and equipment) and all variable costs (labour, materials, etc.) involved in production. Unit costs may be a single sample or represent averages per unit per output.

¹⁰ **Administrative fees** refer to a cost established on the basis of a percentage of the contract or as a fix amount charged by the HPC to its clients to cover the costs of services for which it is difficult to establish an individual calculation of actual costs.

¹¹ **Overhead costs** are defined as recurring costs of running an organisation; necessary for the legal and regular functioning of the HPC. They cannot be directly linked to or caused by a specific contract.

- When the HPC places orders with another HPC in order to avoid charging of overheads in cascade by the different HPCs, only the HPC which finally supplies the services or goods will be entitled to claim overhead costs.

5) Formal requirements for invoicing

Invoices presented by HPCs to the DG ECHO Partner should contain the following details:

- invoice number and date;
- date and place of delivery;
- DG ECHO Action for which procurement was made;
- type of item procured, quantities, sales price per quantity, total sales price and contractual conditions applied (reference to the applicable Incoterm);
- if applicable: insurance costs related to the items concerned, related customs costs incurred by the HPC, related transport costs, related packaging costs;
- if applicable: administrative fees and other internal unit costs charged;
- if applicable overhead costs;
- total invoice value;
- VAT statement in accordance with the applicable VAT rules;

6) Assessment procedure and supervision of HPCs

As the Service of the European Commission responsible for the funding of humanitarian aid Actions, it is the responsibility of DG ECHO to set the procedure for the assessment of organisations wishing to offer their services as HPC. The objective of this procedure is to provide humanitarian organisations with a list of those entities which comply with the criteria defined by DG ECHO.

a) Assessment of candidate organisations

Organisations interested in becoming an HPC will have to fill in a questionnaire in FR or EN and submit it together with a set of supporting documents. DG ECHO website explains the concept of HPCs and the assessment procedure. It also includes the questionnaire to be filled in by applicant organisations together with information on how to complete it correctly, and the list of supporting documents.

Applicant organisations must certify that the documents and information submitted for the assessment and recognition by DG ECHO as HPC are complete and truthful and does not include any misrepresentation.

DG ECHO verifies the completeness and compliance of the replies to the questionnaire and of the requested documents with the mandatory procurement principles, Chapter 2 of Annex IV of the FPA, and the special rules, Chapter 4 of Annex IV of the FPA. In addition, DG ECHO assesses the

technical capacity (internal control system, organisational procedures and financial solidity) and the non-profit character of the candidate organisation. When necessary, complementary explanations may be required from applicant organisations, which will reply in 30 calendar days. This verification process is based on a desk review of the replies and information gathered, completed by on-the-spot checks, when considered useful for the process.

If the organisation does not meet the minimum criteria or does not provide sufficient information, the applicant will be rejected and informed by a letter explaining the identified problems and recalling also the available complaint mechanisms. Applicants will be offered the possibility of requesting the review of this decision by a reasoned letter and/or by providing the missing information within a delay of 30 calendar days. If an organisation gets rejected it will be authorised to reapply one year after the date of rejection.

When the outcome of the assessment is positive, the recognition becomes effective upon signature of the Charter of Humanitarian Procurement Centres by the representatives of the candidate organisation.

The recognition procedure enters into force as from 01/xx/2009 and will last at least until 31/12/2013, one year after the termination of the FPA 2008. Before the expiry date DG ECHO will review the assessment procedure of HPCs, taking the eventual new constraints and/or opportunities of the new FPA into account. The transition to the new procedure for already recognised HPCs should take place during the year 2013.

Should changes in the legislative framework intervene during this period the Commission will judge on the best way to follow-up those changes and it may be forced to end the recognition of HPCs before the date originally intended.

b) The Charter of Humanitarian Procurement Centres

The Charter of Humanitarian Procurement Centres commits the signatory organisations to a minimum set of common principles and good practices and includes a number of obligations *vis-à-vis* DG ECHO and its Partners.

DG ECHO will verify the compliance with the obligations established in the Charter. Failure to respect the commitments subscribed in the Charter may be sufficient ground for the suspension or termination of the recognition.

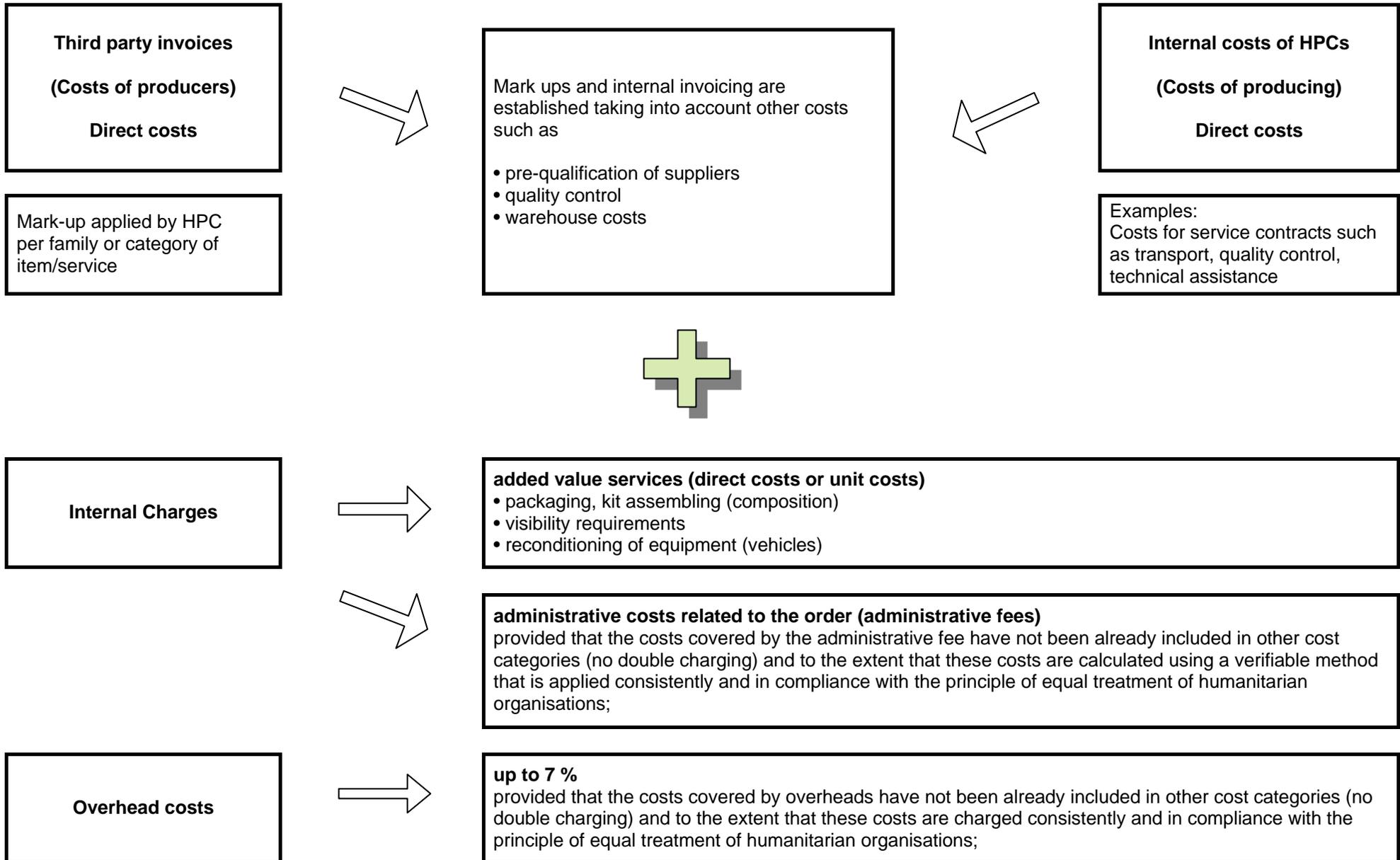
c) Supervisory powers of DG ECHO; on-site verifications and audits

DG ECHO will verify the correctness of the information provided by each HPC in the application and the operational procedures of the organisation by carrying out on-site verifications and audits. This verification will be done in accordance with the standard audit methodology and its findings will be established in a final report. The report will formulate an opinion on the auditing, accounting, internal control and procurement procedures of the HPC and may include a number of suggested actions for improvement.

A periodic assessment of the HPC will take place at least every two years in order to reassess and/or scrutinise the fulfilment of the requirements and the performance of the HPC. This assessment will be done taking into account the experience of the implemented operations, results of verifications and audits as well as the changes to the HPC's procedural environment. This periodic assessment can be done as desk review and/or on the basis of on-the-spot checks/audits.

Moreover, signatories of the Charter will submit to DG ECHO on an annual basis their signed annual accounts certified by an external auditor, their annual activity report and the declaration of non-inclusion in causes of ineligibility annexed to the Charter.

Annex



Glossary

Administrative fees	Administrative fees refer to a cost established on the basis of a percentage of the contract or as a fix amount charged by the HPC to its clients to cover the costs of services for which it is difficult to establish an individual calculation of actual costs.	D.4
Overheads	Overhead costs are defined as recurring costs of running an organisation; necessary for the legal and regular functioning of the HPC. They cannot be directly linked or caused by a specific contract.	D.4
Procurement	Procurement is the process of acquiring goods, works and services. It covers activities necessary for the purchase or rental of goods, services and other requirements such as works and property.	all
Direct costs	Direct costs can be defined as actual costs pertaining to the implementation of the Action and. cover both the costs of goods and services delivered to beneficiaries and the costs related to the support activities required for the correct implementation of the Action.	all
Mark ups	Mark ups are price increases applied by the HPC to the different supplies in order to cover its costs. Mark ups should be defined by categories or families of products taking into account the specific costs associated with the purchase and storage of the products by the HPC. Mark ups should be established with due regard to the principle of non-profit making that rules the overall functioning of an HPC.	D.4
Profit	Profit means a surplus of receipts over the costs incurred by the HPC when delivering supplies or services to humanitarian organisations.	D.4
Unit Costs	Unit Costs are costs incurred by a company to produce, store and sell one unit of a particular product. Unit costs include all fixed costs (i.e. plant and equipment) and all variable costs (labour, materials, etc.) involved in production. Unit costs may be a single sample or represent averages per unit per output.	