

## **GENERAL CONDITIONS**

### **PART A: LEGAL AND ADMINISTRATIVE PROVISIONS**

#### **ARTICLE 1 - LIABILITY**

- 1.1 The beneficiary shall have sole responsibility for complying with any legal obligations incumbent on him.
- 1.2 The NA or the Commission shall not, in any circumstances or on any grounds, be held liable in the event of a claim under the agreement relating to any damage caused during the execution of the action. Consequently, the NA or the Commission will not entertain any request for indemnity or reimbursement accompanying any such claim.
- 1.3 Except in cases of force majeure, the beneficiary shall make good any damage sustained by the NA or the Commission as a result of the execution or faulty execution of the action.
- 1.4 The beneficiary shall bear sole liability vis-à-vis third parties, including for damage of any kind sustained by them while the action is being carried out.

#### **ARTICLE 2 - CONFLICT OF INTERESTS**

- 2.1. The beneficiary undertakes to take all the necessary measures to prevent any risk of conflicts of interests which could affect the impartial and objective performance of the agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional reasons, or any other shared interest.
- 2.2. Any situation constituting or likely to lead to a conflict of interests during the performance of the agreement must be brought to the attention of the NA, in writing, without delay. The beneficiary shall undertake to take whatever steps are necessary to rectify this situation at once.
- 2.3. The NA reserves the right to check that the measures taken are appropriate and may demand that the beneficiary take additional measures, if necessary, within a certain time.

#### **ARTICLE 3 - OWNERSHIP/USE OF THE RESULTS**

- 3.1 Unless stipulated otherwise in this agreement, ownership of the results of the action, including industrial and intellectual property rights, and of the reports and other documents relating to it shall be vested in the beneficiary.
- 3.2 Without prejudice to Article 3.1, the beneficiary grants the NA and the Commission the right to make free use of the results of the action as it deems fit, provided it does not thereby breach its confidentiality obligations or existing industrial and intellectual property rights.

## **ARTICLE 4 - CONFIDENTIALITY**

The NA and the beneficiary undertake to preserve the confidentiality of any document, information or other material directly related to the subject of the agreement that is duly classed as confidential, if disclosure could cause prejudice to the other party. The parties shall remain bound by this obligation beyond the closing date of the action.

## **ARTICLE 5 - PUBLICITY**

5.1 Unless the NA requests otherwise, any communication or publication by the beneficiary about the action, including at a conference or seminar, shall indicate that the action has received funding from the EU.

Any communication or publication by the beneficiary, in any form and medium, shall indicate that sole responsibility lies with the author and that neither the NA nor the Commission is responsible for any use that may be made of the information contained therein.

5.2 The beneficiary authorises the NA and the Commission to publish the following information in any form and medium, including via the Internet:

- the beneficiary's name and address,
- the subject and purpose of the grant,
- the amount granted and the proportion of the action's total cost covered by the funding.

Upon a reasoned and duly substantiated request by the beneficiary, the NA and the Commission may agree to forgo such publicity if disclosure of the information indicated above would risk compromising the beneficiary's security or prejudicing its commercial interests.

## **ARTICLE 6 - EVALUATION**

Whenever the NA, the Commission or any outside body mandated by the NA or the Commission carries out an interim or final evaluation of the action's impact measured against the objectives of the EU programme concerned, the beneficiary undertakes to make available to the NA, the Commission and/or persons authorised by them all such documents or information as will allow the evaluation to be successfully completed and to give them the rights of access specified in Article 19.

## **ARTICLE 7 – SUSPENSION OF IMPLEMENTATION BY THE BENEFICIARY**

7.1 The beneficiary may suspend implementation of the action if exceptional circumstances make this impossible or excessively difficult, notably in the event of force majeure. It shall inform the NA without delay, giving all the necessary reasons and details and the foreseeable date of resumption.

7.2 Unless the agreement is terminated in accordance with Article 11.2 and once the circumstances allow resuming the implementation of the action, the beneficiary shall

inform the NA immediately and present a request for amendment of the agreement. It shall be made in accordance with Article 13 in order to establish the date on which the action shall be resumed, to extend the duration of the action and to make any other modifications that may be necessary to adapt the action to the new implementing conditions..

## ARTICLE 8 - FORCE MAJEURE

- 8.1 *Force majeure* shall mean any unforeseeable exceptional situation or event beyond the parties' control which prevents either of them from fulfilling any of their obligations under this agreement, was not attributable to error or negligence on their part, and proves insurmountable in spite of all due diligence. Defects in equipment or material or delays in making them available (unless due to *force majeure*), labour disputes, strikes or financial difficulties cannot be invoked as *force majeure* by the defaulting party.
- 8.2 A party faced with *force majeure* shall inform the other party without delay by registered letter with advice of delivery or equivalent, stating the nature, probable duration and foreseeable effects.
- 8.3 Neither of the parties shall be held in breach of their obligations under the agreement if they are prevented from fulfilling them by *force majeure*. The parties shall make every effort to minimise any damage due to *force majeure*.
- 8.4 The action may be suspended in accordance with Article 7.

## ARTICLE 9 – AWARD OF CONTRACTS

- 9.1 If the beneficiary has to conclude contracts in order to be able to carry out the action and those contracts constitute costs of the action under an item of eligible direct costs in the estimated budget, the beneficiary shall award the contract to the bid offering best value for money; in doing so, the beneficiary shall take care to avoid any conflict of interests.
- 9.2 Contracts as referred to in Article 9.1. may be awarded only in the following cases:
  - (a) they may only cover the execution of a limited part of the action;
  - (b) recourse to the award of contracts must be justified having regard to the nature of the action and what is necessary for its implementation;
  - (c) the tasks concerned must be set out in Annex I and the corresponding estimated costs must be set out in detail in the budget in Annex II;
  - (d) any recourse to the award of contracts while the action is under way, if not provided for in the initial grant application, shall be subject to prior written authorisation by the NA;
  - (e) the beneficiary shall retain sole responsibility for carrying out the action and for compliance with the provisions of the agreement. The beneficiary must undertake to make the necessary arrangements to ensure that the contractor waives all rights in respect of the NA under the agreement;
  - (f) the beneficiary must undertake to ensure that the conditions applicable to him under Articles 1, 2, 3, 4, 5, 6, 10 and 19 of the General Conditions of the agreement are also applicable to the contractor.

## ARTICLE 10 - ASSIGNMENT

- 10.1. Claims against the NA may not be transferred.
- 10.2. In exceptional circumstances, where the situation warrants it, the NA may authorise the assignment of the agreement, or a part thereof, and payments flowing from it, to a third party following a written request to that effect, giving reasons, from the beneficiary. If the NA agrees, it must make its agreement known in writing before the proposed assignment takes place. In the absence of the above authorisation, or in the event of failure to observe the terms thereof, the assignment shall not be enforceable against and shall have no effect on the NA.
- 10.3. In no circumstances shall such an assignment release the beneficiary from his obligations to the NA.

## ARTICLE 11 – TERMINATION OF THE AGREEMENT

### 11.1 Termination by the beneficiary

In duly justified cases, the beneficiary may withdraw his request for a grant and terminate the agreement at any time by giving 60 calendar days written notice stating the reasons, without being required to furnish any indemnity on this account. If no reasons are given or if the NA does not accept the reasons, the beneficiary shall be deemed to have terminated this agreement improperly. In such case, the NA may require full or partial reimbursement of any pre-financing payments in accordance with Article IV and with the consequences set out in Article 11.4.

If the beneficiary decides to withdraw from the partnership and terminate the agreement, the beneficiary shall immediately notify also the partner region of the termination in writing.

### 11.2 Termination by the NA

The NA may decide to terminate the agreement, without any indemnity on its part, in the following circumstances:

- (a) in the event of a change to the beneficiary's legal, financial, technical, organisational or ownership situation that is liable to affect the agreement substantially or to call into question the decision to award the grant;
- (b) if the beneficiary fails to fulfil a substantial obligation incumbent on him under the terms of the agreement, including its annexes;
- (c) in the event of force majeure, notified in accordance with Article 8, or if the action has been suspended as a result of exceptional circumstances, notified in accordance with Article 7;
- (d) if the beneficiary is declared bankrupt, is being wound up, is having his affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of any other similar proceedings concerning those matters, or is in an analogous situation arising from a similar procedure provided for in national legislation or regulations;

- (e) where the NA has evidence or seriously suspects the beneficiary or any related entity or person, of professional misconduct;
- (f) if the beneficiary has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established;
- (g) where the NA has evidence or seriously suspects the beneficiary or any related entity or person, of fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the EU's financial interests;
- (h) where the NA has evidence or seriously suspects the beneficiary or any related entity or person, of substantial errors, irregularities or fraud in the award procedure or the performance of the grant;
- (i) if the beneficiary has made false declarations, is guilty of misrepresentation or submits reports inconsistent with reality to obtain the grant provided for in the agreement;
- (j) if the partnership has become ineligible following the withdrawal of the partner region (cf. Art.11.1 "Termination by the beneficiary");
- (k) if the NA has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant.

In the cases referred to in points (e), (g) and (h) above, any related person shall mean any physical person with powers of representation, decision-making or control in relation to the beneficiary. Any related entity shall mean in particular any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive n° 83/349/EEC of 13 June 1983.

### 11.3 Termination procedure

The procedure is initiated by registered letter with acknowledgement of receipt or equivalent.

In the cases referred to in points (a), (b), (d), (e), (g) and (h) of Article 11.2, the beneficiary shall have 30 calendar days to submit his observations and take any measures necessary to ensure continued fulfilment of his obligations under the agreement. If the NA fails to confirm acceptance of these observations by giving written approval within 30 calendar days of receiving them, the termination procedure shall continue to run.

Where notice is given, termination shall take effect at the end of the period of notice, which shall start to run from the date when notification of the NA's decision to terminate the agreement is received.

If notice is not given in the cases referred to in points (c), (f), (i), (j) and (k) of Article 11.2, termination shall take effect from the day following the date on which notification of the NA's decision to terminate the agreement is received.

#### 11.4 Effects of termination

In the event of termination, payments by the NA shall be limited to the eligible costs actually incurred by the beneficiary up to the date when termination takes effect, in accordance with Article 17. Costs relating to current commitments that are not due to be executed until after termination shall not be taken into account.

The beneficiary shall have 60 calendar days from the date when termination takes effect, as notified by the NA, to produce a request for final payment in accordance with Article 15.4. If no request for final payment is received within this time limit, the NA shall not reimburse the expenditure incurred by the beneficiary up to the date of termination and it shall recover any amount if its use is not substantiated by the final report requested and approved by the NA.

By way of exception, at the end of the period of notice referred to in Article 11.3, where the NA is terminating the agreement on the grounds that the beneficiary has failed to produce the final report within the deadline stipulated in Article IV.2 and the beneficiary has still not complied with this obligation within two months following the written reminder sent by the NA, the NA shall not reimburse the expenditure incurred by the beneficiary up to the date on which the action ended and it shall recover any amount already paid to the beneficiary as pre-financing.

By way of exception, in the event of improper termination by the beneficiary or termination by the NA on the grounds set out in points (a), (e), (g), (h), (i) or (k) of Article 11.2, the NA may require the partial or total repayment of sums already paid under the agreement on the basis of reports approved by the NA, in proportion to the gravity of the failings in question and after allowing the beneficiary to submit his observations.

### ARTICLE 12 - FINANCIAL CORRECTIONS

- 12.1. By virtue of the Financial Regulation applicable to the General Budget of the EU, any beneficiary declared to be in grave breach of his obligations shall be liable to financial corrections of between 2% and 10% of the value of the grant in question, with due regard for the principle of proportionality.
- 12.2. This rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first.
- 12.3. Where the beneficiary has made false declarations regarding the lump sum or flat-rate financing, the NA may impose financial corrections up to 50% of the total amount of the lump sum or flat-rate financing.
- 12.4. The beneficiary shall be notified in writing of any decision by the NA to apply such financial corrections.

### ARTICLE 13 – AMENDMENTS TO THE AGREEMENT

- 13.1 Any amendment to the grant conditions must be the subject of a written supplementary agreement. No oral agreement may bind the parties to this effect.

- 13.2 The supplementary agreement may not have the purpose or the effect of making changes to the agreement which might call into question the decision awarding the grant or result in unequal treatment of applicants.
- 13.3 If the request for amendment is made by the beneficiary, it must send it to the NA in good time before it is due to take effect and at all events one month before the closing date of the action, except in cases duly substantiated by the beneficiary and accepted by the NA.

## PART B - FINANCIAL PROVISIONS

### ARTICLE 14 - ELIGIBLE COSTS

14.1 Eligible costs of the action are costs actually incurred by the beneficiary, which meet the following criteria:

they are incurred during the duration of the action as specified in Article II.2. of the agreement, with the exception of costs relating to final reports and certificates on the action's financial statements and underlying accounts;

they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the action;

they are necessary for the implementation of the action which is the subject of the grant;

they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;

they comply with the requirements of applicable tax and social legislation;

they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

Funding of eligible costs by an EU grant may take the following forms, according to the categories of costs and in accordance with the provisions laid down in the Special Conditions of the agreement:

reimbursement of a specified proportion of the eligible costs actually incurred;

lump sums;

flat rate financing in the form of scales of unit costs or at a fixed percentage.

The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

14.2 The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out in Article 14.1, are identifiable as specific costs directly linked to performance of the action and which can therefore be booked to it direct. In particular, the following direct costs are eligible provided that they satisfy the criteria set out in the previous paragraph:

the cost of staff assigned to the action, comprising actual salaries plus social security charges and other statutory costs included in the remuneration, provided that this does not exceed the average rates corresponding to the beneficiary's usual policy on remuneration. The corresponding salary costs of personnel of national administrations are eligible to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken;

travel and subsistence allowances for staff taking part in the action, provided that they are in line with the beneficiary's usual practices on travel costs or do not exceed the scales approved annually by the Commission;

the purchase cost of equipment (new or second-hand), provided that it is written off in accordance with the tax and accounting rules applicable to the beneficiary and generally accepted for items of the same kind. Only the portion of the equipment's depreciation corresponding to the duration of the action and the rate of actual use for the purposes of the action may be taken into account by the NA, except where the nature and/or the context of its use justifies different treatment by the NA;

costs of consumables and supplies, provided that they are identifiable and assigned to the action;

costs entailed by other contracts awarded by the beneficiary for the purposes of carrying out the action, provided that the conditions laid down in Article 9 are met;

costs arising directly from requirements imposed by the agreement (dissemination of information, specific evaluation of the action, audits, translations, reproduction, etc.), including the costs of any financial services (especially the cost of financial guarantees).

- 14.3 The eligible indirect costs for the action are those costs which, with due regard for the conditions of eligibility described in Article 14.1, are not identifiable as specific costs directly linked to performance of the action which can be booked to it direct, but which can be identified and justified by the beneficiary using his accounting system as having been incurred in connection with the eligible direct costs for the action. They may not include any eligible direct costs.

By way of derogation from Article 14.1, the indirect costs incurred in carrying out the action may be eligible for flat-rate funding fixed at not more than 7% of the total eligible direct costs. If provision is made in Article III.2 for flat-rate funding in respect of indirect costs, they need not be supported by accounting documents.

- 14.4 The following costs shall not be considered eligible:

return on capital;

debt and debt service charges;

provisions for losses or potential future liabilities;

interest owed;

doubtful debts;

exchange losses;

VAT, unless the beneficiary can show that he is unable to recover it according to the national applicable legislation (VAT is always ineligible cost where public bodies engage as public authorities);

costs declared by the beneficiary and covered by another action or work programme receiving a EU grant;

excessive or reckless expenditure.

- 14.5 Contributions in kind shall not constitute eligible costs. However, the NA can accept, if considered necessary or appropriate, that the co-financing of the action referred to in

Article III.3 should be made up entirely or in part of contributions in kind. In this case, the value calculated for such contributions must not exceed:

the costs actually borne and duly supported by accounting documents of the third parties who made these contributions to the beneficiary free of charge but bear the corresponding costs;

the costs generally accepted on the market in question for the type of contribution concerned when no costs are borne.

Contributions involving buildings shall not be covered by this possibility.

In the case of co-financing in kind, a financial value shall be placed on the contributions and the same amount will be included in the costs of the action as ineligible costs and in receipts from the action as co-financing in kind. The beneficiary shall undertake to obtain these contributions as provided for in the agreement.

- 14.6 By way of derogation from Article 14.3, indirect costs shall not be eligible under a project grant awarded to a beneficiary who already receives an operating grant from the NA or the Commission during the period in question.

## ARTICLE 15 - REQUESTS FOR PAYMENT

Payments shall be made in accordance with Article IV of the Special Conditions.

### 15.1 Pre-financing

Pre-financing is intended to provide the beneficiary with a float.

In case the grant exceeds 60.000€, the NA may ask the beneficiary to furnish a financial guarantee from a bank or an approved financial institution established in one of the Member States of the European Union.

The guarantor shall stand as first call guarantor and shall not require the NA to have recourse against the principal debtor (the beneficiary).

The financial guarantee shall remain in force until final payments by the NA match the proportion of the total grant accounted for by pre-financing. The NA undertakes to release the guarantee within 30 days following that date.

### 15.2 Further pre-financing payments

Where pre-financing is divided into several instalments, the beneficiary may request a further pre-financing payment once he has used up the percentage of the previous payment specified in the provisions of Article IV on further pre-financing. The request shall be accompanied by the following documents:

a detailed statement of the eligible costs actually incurred;

where required by Article IV, a financial guarantee in accordance with Article 15.1;

where required by Article IV, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer;

any other documents in support of his request that may be required in support of the request for further pre-financing payments.

The documents accompanying the request for payment shall be drawn up in accordance with the relevant provisions in Article V and the annexes.

### 15.3 Interim payments

Not applicable.

### 15.4 Payment of the balance

Payment of the balance, which may not be repeated, is made after the end of the action on the basis of actual implementation and the costs actually incurred by the beneficiary in carrying out the action. It may take the form of a recovery order where the total amount of earlier payments is greater than the amount of the final grant determined in accordance with Article 17.

By the appropriate deadline indicated in Article IV, the beneficiary shall submit a request for payment of the balance accompanied by the following documents:

a final report on the implementation of the action;

a final detailed financial statement of the eligible costs actually incurred, following the structure of the estimated budget, which justifies the funding requested expressed as a percentage of the eligible costs actually incurred;

the qualitative and quantitative information needed to determine and justify the funding requested in the form of lump sums or in the form of flat-rate financing through scales of unit costs on the basis of the actual implementation of the action, if applicable under Article III.3;

a full summary statement of the actual receipts and expenditure of the action;

where required by Article IV, a certificate on the action's financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The certificate shall certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that his request for payment is substantiated by adequate supporting documents that can be checked.

The documents accompanying the request for payment shall be drawn up in accordance with the provisions of Article IV and the annexes. The beneficiary shall certify that the information provided in his request for payment is full, reliable and true. It shall certify that the costs incurred can be considered eligible in accordance with the agreement, that all receipts have been declared, and that its request for payment is substantiated by adequate supporting documents that can be checked.

On receipt of these documents, the NA shall have the period specified in Article IV in order to:

approve the final report on implementation of the action;

ask the beneficiary for supporting documents or any additional information it deems necessary to allow the approval of the report;

reject the report and ask for the submission of a new report.

Failing a written reply from the NA within the time limit for scrutiny indicated above, the report shall be deemed to have been approved. Approval of the report

accompanying the request for payment shall not imply recognition of their regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Requests for additional information or a new report shall be notified to the beneficiary in writing.

If additional information or a new report is requested, the time limit for scrutiny shall be extended by the time it takes to obtain this information. The beneficiary shall be informed of that request and the extension of the delay for scrutiny by means of a formal document. The beneficiary shall have the period laid down in Article IV to submit the information or new documents requested.

Extension of the delay for approval of the report may delay the payment by the equivalent time.

Where a report is rejected and a new report requested, the approval procedure described in this article shall apply.

In the event of renewed rejection, the NA reserves the right to terminate the agreement by invoking Article 11.2(b).

## **ARTICLE 16 -GENERAL PROVISIONS ON PAYMENTS**

- 16.1 Payments shall be made by the NA in euros. Any conversion of actual costs into euro shall be made at the daily rate published in the Official Journal of the European Union or, failing that, at the monthly accounting rate established by the Commission and published on its website applicable on the day when the payment order is issued by the NA, unless the Special Conditions of the agreement lay down specific provisions.
- 16.2 The NA may, at any time during the implementation of the Agreement, suspend the pre-financing payments, interim payments or payment of the balance for all beneficiaries, or suspend the pre-financing payments or interim payments for any one or several beneficiaries:
- (a) if the NA has evidence that the beneficiary has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the grant, or if a beneficiary fails to comply with its obligations under the Agreement;
  - (b) if the NA has evidence that the beneficiary has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other grants funded by the Union or by the European Atomic Energy Community which were awarded to that beneficiary under similar conditions, provided that those errors, irregularities, fraud or breach of obligations have a material impact on this grant; or
  - (c) if the NA suspects substantial errors, irregularities, fraud or breach of obligations committed by the beneficiary in the award procedure or in the implementation of the Agreement and needs to verify whether they have actually occurred.

Before suspending payments, the NA shall formally notify the beneficiary of its intention to suspend payments, specifying the reasons thereof and, in the cases referred to in points (a) and (b) of the first subparagraph, the necessary conditions for resuming

payments. The beneficiary shall be invited to make any observations within 30 calendar days from receipt of this notification.

If, after examination of the observations submitted by the beneficiary, the NA decides to stop the procedure of payment suspension, the NA shall formally notify the coordinator thereof.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the NA decides to pursue the procedure of payment suspension, it may suspend payments by formally notifying the beneficiary, specifying the reasons for the suspension and, in the cases referred to in points (a) and (b) of the first subparagraph, the definitive conditions for resuming payments or, in the case referred to in point (c) of the first subparagraph, the indicative date of completion of the necessary verification.

The suspension of payments shall take effect on the date when the notification is sent by the NA.

In order to resume payments, the beneficiary shall endeavour to meet the notified conditions as soon as possible and shall inform the NA of any progress made in this respect.

The NA shall, as soon as it considers that the conditions for resuming payments have been met or the necessary verification, including on-the-spot checks, has been carried out, formally notify the coordinator thereof.

During the period of suspension of payments and without prejudice to the right to suspend the implementation of the action in accordance with Article 7.1 or to terminate the agreement or the participation of a beneficiary in accordance with Article 11.1 and Article 11.2, the beneficiary is not entitled to submit any requests for payments and supporting documents.

The corresponding requests for payments and supporting documents may be submitted as soon as possible after resumption of payments or may be included in the first request for payment due following resumption of payments in accordance with the schedule laid down in Article IV.

- 16.3 On expiry of the period for payment specified in Article IV, and without prejudice to Article 16.2, the beneficiary is entitled to interest on the late payment at the rate applied by the European Central Bank for its main refinancing operations in euro, plus three and a half points; the reference rate to which the increase applies shall be the rate in force on the first day of the month of the final date for payment, as published in the C series of the Official Journal of the European Union. This provision shall not apply to recipients of a grant which are public authorities of the Member States of the European Union.

Interest on late payment shall cover the period from the final date for payment, exclusive, up to the date of payment as defined in Article 16.1, inclusive. The interest shall not be treated as a receipt for the action for the purposes of determining the final grant within the meaning of Article 17.4. The suspension of payment by the NA may not be considered as late payment.

By way of exception, when the interest calculated in accordance with the provisions of the first and second paragraphs of this Article is lower than or equal to EUR 200, it shall be paid to the beneficiary only upon demand submitted within two months of receiving late payment.

- 16.4 The NA shall deduct the interest yielded by pre-financing which exceeds EUR 50 000<sup>1</sup> as provided for in Article IV from the payment of the balance of the amount due to the beneficiary. The interest shall not be treated as a receipt for the action within the meaning of Article 17.4.

Where the pre-financing payments exceed EUR 750 000 per agreement at the end of each financial year, the interest shall be recovered for each reporting period. Taking account of the risks associated with the management environment and the nature of actions financed, the NA may recover the interest generated by pre-financing lower than EUR 750 000 at least once a year.

Where the interest yielded exceeds the balance of the amount due to the beneficiary as indicated in Article 15.4, or is generated by pre-financing referred to in the previous paragraphs of this Article, the NA shall recover it in accordance with Article 18.

Interest yielded by pre-financing paid to Member States is not due to the NA.

- 16.5 The beneficiary shall have 30 calendar days from the date of notification by the NA of the final amount of the grant determining the amount of the payment of the balance or the recovery order pursuant to Article 17, or failing that of the date on which the payment of the balance was received, to request information in writing on the determination of the final grant, giving reasons for any disagreement. After this time such requests will no longer be considered. The NA undertakes to reply in writing within 30 calendar days following the date on which the request for information is received, giving reasons for its reply.

This procedure is without prejudice to the beneficiary's right to appeal against the NA's decision pursuant to Article VIII. Under the terms of EU legislation in this matter, such appeals must be lodged within two months following the notification of the decision to the beneficiary or, failing that, following the date on which the beneficiary learned of the decision.

## **ARTICLE 17 - DETERMINING THE FINAL GRANT**

- 17.1 Without prejudice to information obtained subsequently pursuant to Article 19, the NA shall adopt the amount of the final payment to be granted to the beneficiary on the basis of the documents referred to in Article 15.4 which it has approved.
- 17.2 The total amount paid to the beneficiary by the NA may not in any circumstances exceed the maximum amount of the grant laid down in Article III.1, even if the total actual costs eligible exceed the estimated total eligible costs specified in Article III.1.
- 17.3 For eligible costs funded on the basis of a given percentage, if the actual eligible costs when the action ends are lower than the estimated total eligible costs, the NA's contribution shall be limited to the amount obtained by applying the EU grant

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1 For external actions, the corresponding ceiling is set at EUR 250 000. For crisis management and humanitarian aid operations, the interest shall be recovered if the pre-financing exceeds per agreement EUR 750 000 at the end of each financial year and is for a duration of more than 12 months.

percentage specified in Article III.2 to the actual eligible costs approved by the NA. For eligible costs financed on the basis of flat rates, the NA's contribution shall be determined by application of the corresponding formulas, taking into account the actual implementation of the action.

The NA's contribution to eligible costs funded by lump sums or flat rates in the form of scales of unit costs is limited in any event to the specific ceiling laid down in Article III.1. If the specific conditions or grounds for granting this contribution, as set out in the Special Conditions of the agreement, are not fulfilled or are only partially fulfilled on completion of the action, the NA shall withdraw or reduce its contribution in line with the actual extent of fulfilment of the conditions or requirements.

- 17.4 The beneficiary hereby agrees that the grant shall be limited to the amount necessary to balance the action's receipts and expenditure and that it may not in any circumstances produce a profit for him.

Profit shall mean any surplus of total actual receipts attributable to the action over the total actual costs of the action. The actual receipts to be taken into account shall be those which have been established, generated or confirmed on the date on which the request for payment of the balance is drawn up by the beneficiary, to which shall be added the amount of the grant determined by applying the principles laid down in Articles 17.2 and 17.3. For the purposes of this article, only actual costs falling within the categories set out in the approved budget referred to in Article III.1 and contained in Annex II shall be taken into account; non-eligible costs shall always be covered by non-EU resources.

Any surplus determined in this way shall result in a corresponding reduction in the amount of the grant.

- 17.5 Without prejudice to the right to terminate the agreement under Article 11, and without prejudice to the right of the NA to apply the corrections referred to in Article 12, if the action is not implemented or is implemented poorly, partially or late, the NA may reduce the grant initially provided for in line with the actual implementation of the action on the terms laid down in this agreement.
- 17.6 On the basis of the amount of the final payment determined in this way and of the aggregate amount of the payments already made under the terms of the agreement, the NA shall set the amount of the payment of the balance as being the amount still owing to the beneficiary. Where the aggregate amount of the payments already made exceeds the amount of the final grant, the NA shall issue a recovery order for the surplus.
- 17.7 By way of derogation to Article 17.4. the no-profit principle does not apply to:
- grants that take the form of study, research or training scholarships paid to natural persons or as other forms of direct support paid to natural persons who are most in need;
  - grants the maximum amount of which, as laid down in Article I.3, is lower than or equal to EUR 60.000,00.

## ARTICLE 18 - RECOVERY

- 18.1 Where an amount is to be recovered under the terms of the Agreement, the beneficiary concerned shall repay the NA the amount in question.

Before recovery, the NA shall formally notify the beneficiary concerned of its intention to recover the amount unduly paid, specifying the amount due and the reasons for recovery and inviting the beneficiary to make any observations within a specified period.

If no observations have been submitted or if, despite the observations submitted by the beneficiary, the NA decides to pursue the recovery procedure, the NA may confirm recovery by formally notifying to the beneficiary a debit note (“debit note”), specifying the terms and the date for payment.

- 18.2 If the beneficiary fails to pay by the date set by the NA, the sum due shall bear interest at the rate indicated in Article 16.3. Interest on late payment shall cover the period between the date set for payment, exclusive, and the date when the NA receives full payment of the amount owed, inclusive.

Any partial payment shall first be entered against charges and interest on late payment and then against the principal.

- 18.3 If payment has not been made by the due date, sums owed to the NA may be recovered by offsetting them against any sums owed to the beneficiary by the NA, after informing it accordingly by registered letter with acknowledgement of receipt or equivalent, or by calling in the financial guarantee provided in accordance with Article 15.1. In exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the NA may recover by offsetting before the due date of the payment. The beneficiary's prior consent shall not be required.

- 18.4 Bank charges occasioned by the recovery of the sums owed to the NA shall be borne solely by the beneficiary.

- 18.5 The beneficiary understands that the non compliance with the request of repayment of the amount in question may result in legal action against it by the NA in accordance with national legislation

## ARTICLE 19 - CHECKS AND AUDITS

- 19.1 The beneficiary undertakes to provide any detailed information, including information in electronic format, requested by the NA, the Commission or by any other outside body authorised by the NA or the Commission to check that the action and the provisions of the agreement are being properly implemented.

- 19.2 The beneficiary shall keep at the NA's and Commission's disposal all original documents relating to the agreement, especially accounting and tax records including records on the actual receipts and expenditure of the action, or, in exceptional and duly justified cases, certified copies of original documents related to the agreement on any appropriate medium which ensures their integrity in line with applicable national legislation, for a period of five years (for grants over 60.000 EUR) / three years for grants up to 60.000 Euros from the date of payment of the balance.

- 19.3 The beneficiary agrees that the NA, the national authority supervising the NA or the Commission may have an audit of the use made of the grant carried out either directly by its own staff or by any other outside body authorised to do so on its behalf. Such

- audits may be carried out throughout the period of implementation of the agreement until the balance is paid and for a period of five years from the date of payment of the balance. Where appropriate, the audit findings may lead to recovery decisions by the NA.
- 19.4. Where the checks on the event generating the lump sum or flat-rate financing reveal that the event has not occurred and an undue payment has been made to the beneficiary, the NA shall be entitled to recover up to the amount of the lump sum or flat-rate financing. Where the beneficiary has made false declarations, the NA may impose financial corrections in accordance with Article 12.
  - 19.5 The beneficiary undertakes to allow the NA and the Commission staff and outside personnel authorised by the NA or the Commission the appropriate right of access to sites and premises where the action is carried out and to all the information, including information in electronic format, needed in order to conduct such audits.
  - 19.6 By virtue of Council Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and the Council, the European Anti-Fraud Office (OLAF) may also carry out on-the-spot checks and inspections in accordance with the procedures laid down by EU law for the protection of the financial interests of the EU against fraud and other irregularities. Where appropriate, the inspection findings may lead to recovery decisions by the NA.
  - 19.7 The European Court of Auditors shall have the same rights as the NA, notably right of access, as regards checks and audits.