

GENERAL CONDITIONS TO THE TRANSFER AGREEMENT

GENERAL AND ADMINISTRATIVE PROVISIONS

Article 1 - General obligations

1.1 The Commission shall manage the Donor's Contribution with the purpose of co-financing the Action described in Annex I (Description of the Action) of the Agreement.

1.2 The Commission shall implement the Action in compliance with the applicable provisions set out in Article 1(3) of the Special Conditions, with the requisite degree of care, efficiency, transparency and diligence, as required by best practice in the field concerned, and in compliance with this Agreement.

1.3 The Commission shall make every effort to mobilise all the financial, human and material resources required for full implementation of the Action, as specified in Annex I.

1.4 The Commission shall take appropriate measures to prevent irregularities or fraud, as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests of 26 July 1995 (JO C 316/48, 27.11.1995), as well as corruption, as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union of 26 May 1997 (JO C 195/1, 25.6.1997).

The Commission shall take appropriate measures against any person who is suspected of misuse of funds or corruption.

The Commission shall forward to the European Anti-Fraud Office (OLAF) without delay any information relating to possible cases of fraud or corruption or any other illegal activity linked to this Agreement and shall inform the Donor about this transmission.

Article 2 - Obligations regarding information

2.1 The Commission shall provide the Donor with full information on the implementation of the Action. The type and frequency of the reports shall be set out in the Special Conditions.

2.2. In addition to the above mentioned reports, the Commission will ensure that progress and situation reports, publications, press releases and updates, relevant to the Action covered by this Agreement, are communicated to the Donor as and when they are issued.

2.3 In any event the Commission shall inform the Donor without delay of any circumstances likely to hamper or delay the implementation of the Action.

Article 3 - Liability

3. 1 The Commission shall have sole responsibility for complying with any legal obligation incumbent on it.

3.2 The Donor may not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Commission while the Action is being carried out or as a consequence of the Action. Therefore, the Donor may not accept any claim for compensation or increases in payment in connection with such damage or injury, except for non-compliance with contractual obligations by the Donor.

3.3 Subject to the rules governing the Commission's privileges and immunities, the Commission shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the Action. The Commission shall discharge the Donor of all liability associated with any claim or action brought as a result of an infringement by the Commission or the Commission's staff or individuals for whom these are responsible of rules or regulations, or as a result of violation of a third party's rights.

Article 4 - Conflict of interests

The Donor undertakes to take all necessary precautions to avoid conflicts of interests. There is a conflict of interests where the impartial and objective exercise of the functions of any person under this Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party.

Article 5 - Confidentiality

The Donor and the Commission undertake to preserve the confidentiality of any document, information or other material directly related to the Agreement and duly classified as confidential, until at least five years after the date specified in Article 2(3) of the Special Conditions.

Article 6 - Visibility

6.1 Unless the Donor requests or agrees otherwise, the Commission shall ensure the visibility of the Donor's Contribution.

6.2 The Donor accepts that the Commission publishes in any form and medium, including on its website the name and address of the Donor, the purpose of the contribution as well as the amount contributed and if relevant the percentage of co-financing.

Article 7 - Ownership and use of results

7.1 Ownership, title and industrial and intellectual property rights in the results of the Action and the reports and other documents relating to it shall vest in the Commission, as the case may be together with third parties or as may otherwise be agreed by the Commission.

7.2 Notwithstanding the provisions of Article 7.1 and subject to Article 5, the Commission shall grant the Donor the right to use free of charge and as it sees fit all documents deriving from the Action, whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.

Article 8 - Evaluation of the Action

8.1 Representatives of the Donor may be invited to participate in the main monitoring and in the evaluation missions relating to the performance of the Action. The results of such missions shall be reported to the Donors.

8.2 Article 8.1 is without prejudice to any evaluation mission which the Donor as a donor may wish to perform. Evaluation missions by representatives of the Donor should be planned and completed in a collaborative manner with Commission's staff, keeping in mind the commitment of the Parties to the effective and efficient operation of this Agreement. These missions are to be planned ahead and procedural matters are to be agreed upon by the Commission and the Donor in advance. The mission will offer to make a draft of its report available to the Commission for comments prior to final issuance.

Article 9 - Amendment of the Agreement

Any substantial modification to the Agreement, including the annexes thereto, shall be set out in writing in an amendment signed by the Commission and the Donor, without prejudice to non-substantial modifications of the Action introduced by the Commission, which would affect Annexes I and II to a limited extent.

Article 10 - Applicable rules to procurement and grants

Procurement of any goods, works or services or the award of grants by the Commission in the context of the Action shall be carried out in accordance with the applicable rules and procedures set out in the applicable Financial Regulation (General Budget or EDF).

Article 11 - Implementation period of the Agreement, suspension, force majeure

11.1 Irrespective of the starting date and implementation period of the project/programme of the Commission, the implementation period of this Agreement shall be as set out in Article 2 of the Special Conditions.

11.2 The Commission may suspend implementation of all or part of the Action, upon the Donor's request or its own motion, if circumstances so require, in particular in case of force majeure. The Commission shall inform the Donor without delay and provide all the necessary details. This Agreement may be terminated in accordance with Article 12. If the Agreement is not terminated, the Commission shall endeavour to minimise the duration of the suspension and may resume implementation of the Action once the conditions allow, and shall inform the Donor accordingly.

11.3 The implementation period of this Agreement is automatically extended by an amount of time equivalent to the duration of the suspension. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions.

11.4 Neither of the Parties shall be held liable for breach of its obligations under the Agreement if it is prevented from fulfilling them by force majeure. 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 (or of their partners, contractors, agents or employees), and could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available, labour disputes, strikes or financial problems cannot be invoked as force majeure by the defaulting party.

Without prejudice to Article 11.2 above, the Party invoking force majeure shall notify the other without delay, stating the nature, likely duration and foreseeable effect, and take any measure to minimise possible damage.

Article 12 - Termination of the Agreement

In the event of exceptional circumstances such as:

- non- starting of the implementation or final blockade of the Action due to force majeure, or in the event of suspension pursuant to Article 11.2, or if, at any time, either Party believes that the purposes of the Agreement can no longer be effectively or appropriately carried out;
- in the event of fraud, corruption or any other illegal activity to the detriment of the financial interests of the European Union;
- non-execution or infringement, intentionally or by negligence, of an agreement or regulation, resulting from an act or an omission, which causes or might cause a loss to the Contribution in the execution of the Agreement

The Parties shall consult each other. Failing agreement on a solution, either Party may terminate the Agreement by serving two months' written notice.

In that event, the balance of the Contribution not committed during the implementation of the Action shall be reimbursed to the Donor, according to the principle of priority of consumption laid down in the relevant applicable financial rules.

Article 13 - Applicable law and jurisdiction

13.1 The Contribution is governed by the terms of the present Agreement, EU law, and on a subsidiary basis by the Belgian law.

13.2 The Parties will enter into consultations at the request of either party should any dispute arise concerning the interpretation, application or fulfilment of this Agreement, including its existence, validity or termination.

13.3 If these consultations fail to amicably resolve such a dispute to the satisfaction of both parties,

any party may refer the matter to the may refer the matter to the General Court of the European Union and, in the event of appeal, the Court of Justice of the European Union.

13.4 Nothing in this Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party hereto by its constituent documents or international law.

FINANCIAL PROVISIONS

Article 14 - Indirect administrative costs

A flat rate or a lump sum may be allocated to the Commission out of the Contribution in order to cover the administrative costs. This flat rate or lump sum shall be established according to the type of action and amount of the contribution.

Article 15 - Transfer of the Contribution

15.1 Article 4 of the Special Conditions shall set out the modalities for transfer of funds. The Donor shall disburse its Contribution in one single instalment or in several instalments. In case of several instalments, the Commission shall call for a yearly payment, on the basis of the forecast cash-flow needs of the Action.

15.2 The Contribution, or each of the instalments, shall be transferred within 45 days of the receipt of a debit note issued by the Commission, to the bank account indicated in that note, with a communication specifying the name of the Action as well as any other budgetary references required by the Commission in the debit note.

15.3 On expiry of the payment period, the sum due shall bear interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first day of the month in which payment was due, increased by three and a half percentage points. The interest shall be payable for the period elapsing from the day following expiry of the time limit for payment up to the day of payment. Any partial payment shall first cover the interest.

Article 16 - Accounting and auditing

16.1 The Commission shall keep accurate and regular records and accounts of the implementation of the Action co-financed by the Contribution.

16.2 The Contribution shall be subject to the internal and external auditing procedures laid down in the relevant Financial Regulation (General Budget or EDF).