

GENERAL CONDITIONS

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 this Transfer Agreement.
- 1.2 The Commission shall implement the Action in compliance with the legal provisions applicable to the expenditure of the European Union, in particular those 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 Transfer 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 (Description of the Action).
- 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 (OJ C 316, 27.11.1995, p. 48), 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 (OJ C 195, 25.6.1997, p. 1).
- 1.5 The Commission shall take appropriate measures against any person who is suspected of misuse of funds or corruption.
- 1.6 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 shall ensure that progress and situation reports, publications, press releases and updates, relevant to the Action covered by this Transfer 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 the 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 –Administrative costs

4.1 A lump sum shall be allocated to the Commission out of the Contribution in order to cover its administrative costs. This lump sum shall be established according to the type of action and amount of the contribution and stipulated in Article 3.2 of the Special Conditions and shall not be reduced in case of reduction of the Donor's Contribution or reimbursed pursuant to Article 14.

4.2. Unless stipulated otherwise in Article 3.2 of the Special Conditions, the administrative costs shall be calculated on the basis of the Contribution as follows:

(a) for the budget support component of the aid modality of budget support: a basic lump sum of EUR 100 000 and an additional lump sum of EUR 25 000 for each additional budget support tranche generated by the Donor's Contribution;

(b) for the aid modality of project and for complementary support to budget support: a basic lump sum of EUR 250 000 for a Contribution up to EUR 5 million and an additional lump sum amounting to 4 % of the Contribution amount between EUR 5 and 10 million and amounting to 2 % of the Contribution amount above EUR 10 million.

Article 5 - Transfer of the Contribution

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

5.2 The Contribution, or each of the instalments, shall be transferred within 60 days of the date of the debit note issued by the Commission, into 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. The debit note for the first instalment shall not be sent before the notification by the Commission to the Donor of the entry into force of this Transfer Agreement where this Action is covered by a Financing Agreement concluded with the partner country.

5.3 On expiry of the time limit for payments specified in paragraph 2, the Commission shall receive interest on the late payment , at the rate applied by the European Central Bank to its principal refinancing operations in euros. The reference rate shall be the rate in force, on the first day of the month in which the time limit for payments expires, as published in the C series of the Official Journal of the European Union, increased by three and a half percentage points. Interest on late payment shall cover the period running from the day following the due date for payment up to and including the date when Commission actually receives payment. Any partial payment shall first cover the interest

Article 6 - Accounting and auditing

- 6.1 The Commission shall keep accurate and regular records and accounts of the implementation of the Action co-financed by the Contribution.
- 6.2 The Contribution shall be subject to the internal and external auditing procedures laid down in the applicable Financial Regulation.

Article 7 - 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 Transfer Agreement is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with another party.

Article 8 - Confidentiality

- 8.1 The Commission and the Donor shall preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is confidential. The Donor may have access upon request, on a confidential basis, to such documents, information or other material. The confidential nature of a document shall not prevent from it being communicated on a confidential basis when the rules binding upon the Parties so require.
- 8.2 The Parties shall obtain each other's prior written consent before publicly disclosing such information unless:
 - a) the concerned Party agrees to release the other Party from the earlier confidentiality obligations;
 - b) the confidential information becomes public through other means than in breach of the confidentiality obligation through disclosure by the Party bound by that obligation;
 - c) the disclosure of confidential information is required by law. In no case can disclosure put into jeopardy the Commission's privileges and immunities or the safety and security of the Commission's staff.
- 8.3 The Parties shall remain bound by confidentiality for at least five years after the end of the execution period.

Article 9 - Visibility

- 9.1 Unless the Donor requests or agrees otherwise, the Commission shall ensure the visibility of the Donor's Contribution.
- 9.2 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 10 - Ownership and use of results

- 10.1 To the extent legally possible, 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.
- 10.2 Notwithstanding the provisions of Article 10.1 and subject to Article 8, 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 pre-existing industrial and intellectual property rights.

Article 11 - Evaluation of the Action

11.1 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.

11.2 Article 11.1 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 Transfer Agreement. The Commission and the Donor shall agree on procedural matters in advance. The Donor shall make the draft report of the evaluation or monitoring mission available to the Commission for comments prior to final issuance. The Donor shall send the final report to the Commission once issued.

Article 12 - Amendment of this Transfer Agreement

Any substantial modification to this Transfer 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 III to a limited extent without changing the nature and objectives of the Action.

Article 13 - Implementation period of this Transfer Agreement, suspension, force majeure

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

13.2 The Commission may suspend implementation of all or part of the Action, upon the Donor's request or of 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 Transfer Agreement may be terminated in accordance with Article 14. If this Transfer 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.

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

13.4 Neither of the Parties shall be held liable for breach of its obligations under this Transfer 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 Transfer Agreement, was not attributable to error or negligence on their part (or of their 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 13.2 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 14 - Termination of this Transfer 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 13.2, or if, at any time, either Party believes that the purposes of this Transfer 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 this Transfer Agreement

the Parties shall consult each other. Failing agreement on a solution, either Party may terminate this Transfer 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 by the Commission to the Donor pro rata to the Donor's share in co-financing the Action. A lump sum may be deducted from the balance to cover the costs of an audit and an evaluation, if applicable. The lump sum for administrative costs is always due in full.

Article 15 – Reimbursement of unused funds

Where the Action was completely implemented but not all the funds were used, the balance shall be reimbursed by the Commission to the Donor pro rata to the Donor's share in co-financing the Action.

Article 16 - Applicable law and jurisdiction

16.1 This Transfer Agreement is governed by EU law, and on a subsidiary basis by the Belgian law.

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

16.3 If these consultations fail to amicably resolve such a dispute to the satisfaction of both Parties, any of them 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.

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