



PAGoDA 2 MANUAL

version January 2017



European Commission
Directorate-General
for International Cooperation and Development



PAGODA 2 MANUAL

applicable to contracts under the PAGODA 2 templates

The Manual is designed to provide guidance on the interpretation of the contractual provisions of the PAGODA 2 template.

It is not legally binding, nor can it be relied upon to challenge a Contracting Authority's decision, judicially or otherwise.

*With respect to the contractual arrangements with International Organisations and Member State Agencies,
specific guidance can be found in the respective Framework Administrative Arrangement / Agreement
of each Organisation (whenever applicable), namely, in the section concerning interpretative provisions.*

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ANNEX II:

PAGoDA General Conditions



PART I:

Common provisions applicable to PA Grant and Delegation Agreements

Text of the Article		Interpretation/Guidelines on application
Article 1 - Definitions		
Action:	the cooperation programme or project partly or wholly financed by the EU, which is carried out by the Organisation as described in Annex I.	The PAGoDA template is applicable to Actions of both EU internal policies and External Actions. <i>This Manual only covers EU External Actions.</i>
Contractor:	a natural or legal person with whom a Procurement Contract has been signed.	The Organisation should ensure that the provisions listed in <i>Article 2.4</i> of the General Conditions also apply to Contractors.
CFSP:	Common Foreign and Security Policy of the European Union.	
Days:	all references to “days” are to calendar days.	
End date:	the date by which the Agreement ends, i.e. is the moment of the payment of the balance by the Contracting Authority in accordance with <i>Article 19</i> or when the Organisation repays any amounts paid in excess of the final amount due pursuant to <i>Article 20</i> . If any of the Parties invokes a dispute settlement procedure in accordance with <i>Article 14</i> , the End Date is postponed until the completion of such procedure.	The End Date of the contract does not match the end of the Implementation Period, which is stipulated under Article 2.3 of the Special Conditions. The payment of the balance may correspond to a «0 payment» (i.e. when the total amount of the pre-financing instalments already paid to the Organisation corresponds exactly to the final amount of the EU contribution).
EU External Action:	Action financed under EDF, DCI, ENI, IPA II, INSC, IcSP, PI, EIDHR and their predecessors. All other Actions are Internal Policies.	Regarding EU External Actions, it is understood that: EDF means European Development Fund; DCI means Development and Cooperation Instrument; ENI means European Neighbourhood Instrument; IPA II means Instrument for Pre-accession Assistance; INSC means Instrument for Nuclear Safety Cooperation; IcSP means Instrument contributing to Stability and Peace; PI means Partnership Instrument for cooperation with third countries; EIDHR means European Instrument for the promotion of Democracy and Human Rights worldwide; and their predecessors.

Final Beneficiary: a natural or legal person ultimately benefitting from the Action.

Force Majeure: any unforeseeable exceptional situation or event beyond the Parties' control which prevents either of them from fulfilling any of its obligations under the Agreement, which may not be attributed to error or negligence on either part (or the part of the Grant Beneficiaries, Affiliated Entities, Contractors, agents or staff), and which could not have been avoided by the exercise of due diligence. Defects in equipment or material or delays in making them available cannot be invoked as force majeure, unless they stem directly from a relevant case of force majeure. Labour disputes, strikes or financial problems of the Organisation cannot be invoked as force majeure by the defaulting Party.

The concept is applied in light of Articles 12.5, 12.7, 12.8 of Annex II General Conditions ("Suspension for exceptional circumstances") and Article 3.1 of Annex II b). For the purpose of this definition, the concept of "Party" should also include Co-beneficiary and Co-delegatee.

Indicator: the quantitative and/or qualitative factor or variable that provides a simple and reliable means to measure the achievement of the Results of an Action.

Please see the general obligation set out in Article 2.1 of the General Conditions.

Internal Control System: a process applicable at all levels of management designed to provide reasonable assurance of achieving the following objectives:

- a) effectiveness, efficiency and economy of operations;
- b) reliability of reporting;
- c) safeguarding of assets and information;
- d) prevention, detection, correction and follow-up of fraud and irregularities;
- e) adequate management of the risks relating to the legality and regularity of the financial operations, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

Outcome: the likely or achieved short-term and medium-term effects of an Action's Outputs.

Output: the products, capital goods and services which result from an Action's activities.

Procurement Contract: a contract signed between the Organisation, a Co-Beneficiary, Co-Delegatee or an Affiliated Entity and a Contractor under which the Contractor provides services, supplies or works.

Result:	the Output or Outcome of an Action.
Regulations and Rules:	regulations, rules, organisational directives, instructions and other parts of the regulatory framework of the Organisation.
Sound Financial Management:	principle overarching the implementation of this Agreement, namely economy, effectiveness and efficiency. The principle of economy requires that resources used in the pursuit of the implementation of the Action shall be made available in due time, in appropriate quantity and quality and at the best price. The principle of effectiveness concerns the attainment of the specific objectives and the achievement of the intended results. The principle of efficiency concerns the best relationship between resources employed and results achieved.

> Definitions applicable to Delegation Agreements only

Co-Delegatee:	an entity implementing part of the Action and being a party to the relevant Delegation Agreement together with the Organisation. The Co-Delegates together with the Organisation are referred to as "Delegates".	<p>Co-delegates must have been subject to a positive pillar-assessment conducted on the basis of the terms of reference elaborated by the Commission.</p> <p>As far as possible implementing Partners which are Pillar-Assessed should be qualified as Co-Delegates, rather than Grant Beneficiaries and the model of Co-Delegation should be applied. Annex II a) should then be included in the List of Annexes (Article 6 of the Special Conditions).</p>
Early Detection and Exclusion System:	system set up by Regulation (EU, Euratom) No 2015/1929 of 28 October 2015 on the financial rules applicable to the general budget of the Union (OJ L 286/1, 30.10.2015) which includes information on the early detection of risks threatening the EU financial interests, on the cases of exclusion from EU funding of legal and natural persons and on the cases of imposition of financial penalties.	The applicable provisions on Early Detection and Exclusion System within the scope of PAGODA2 are set out in Articles 22.4, 22.5 and 22.6 the Additional Provisions applicable only to Delegation Agreements.
Grant:	a direct financial contribution by way of donation under a Delegation Agreement given by the Organisation to finance third parties activities.	Note the difference between on the one hand the «Pillar Assessed Grant Agreement» signed by the Contracting Authority and the Organisation, and on the other the «Grant» as defined here awarded by the Organisation to a third party. The latter is a financial contribution given by the Organisation to a Beneficiary within the Delegation Agreement.

Grant Beneficiary:	a natural or legal person to whom a Grant has been awarded. Grant Beneficiaries can sub-grant and procure for the implementation of their activities.	Under Delegation Agreements, the Organisation should ensure that the provisions listed in <i>Article 2.4</i> of the General Conditions apply also to Grant Beneficiaries. In comparison with PAGO DA 1, the notion of sub-delegation disappears from the template. The Implementing Partners of the Organisation will be considered and treated as Grant Beneficiaries unless a Co-Delegation agreement has been signed.
Multi-donor Action:	an Action co-financed by the EU contribution (whether or not earmarked) and other donor(s).	The concept of Multi-donor Action covers all the situations where the Organisation or other donor(s) provide co-financing along with the EU Contribution. It encompasses both the cases of Parallel Co-financing (where the EU contribution is earmarked) and Joint Co-financing (where the EU contribution is not earmarked). Parallel Co-financing entails any action which is broken down into clearly identifiable sub Actions, each funded by a different co-financing partner. The funds of each donor are earmarked. Normally, each sub-Action will be subject to the rules and procedures imposed by the donor financing that sub-Action. For the purpose of this definition, an Action which entails a contribution in-kind is considered to be a case of parallel co-financing. For the purpose of <i>Article 2.4</i> of the Special Conditions Delegation Agreement, it is understood that the number of months of the contracting deadline can exceed 36 months both in Actions classified as Joint Co-financing and Parallel Co-financing. In <i>Article 1.2</i> of the Special Conditions for Delegation Agreement, it should be determined whether or not an Action is a Multi-donor Action.

> Definitions applicable to PA Grant Agreements only

Affiliated Entity:	an entity having a structural link with the Organisation or a Co-Beneficiary, in particular a legal or capital link, and implementing part of the Action.
Co-Beneficiary:	an entity implementing part of the Action and being a party to the Agreement together with the Organisation. The Organisation normally signs the Agreement also on behalf of the Co-Beneficiaries.

Additional Definitions not provided in *Article 1*:

Notional Approach:

«Further clarification of the abovementioned concept can be found in Chapter 3 of the DEVCO COMPANION: <http://intragate.ec.europa.eu/dg/devco/companion/document.do?nodeNumber=3.1.2.1>.

This concept is of relevance for the purposes of *Article 3.8.f*. The notional approach is only applicable to Delegation Agreements.»

Priority of Consumption:

In order to keep the Commission's presence in a long-term Action short, costs eligible to the Commission can be charged to the EU contribution as a priority during the Commission's presence in the Action. Priority of consumption has to do with the release of further pre-financing, for clearing and for final payment. This means that costs incurred in a certain period (i.e. in the implementation period of EU agreement with the fund-managing entity) are attributed as a priority to the EU contribution, and not divided among the donors pro rata, as otherwise be expected. In this way, the EU's financial participation can come to an end more quickly. In other words, during the implementation period set out in the EU's agreement with the Organisation, it is assumed that the EU funds are "consumed" first. The concept is only applicable to Delegation Agreements.

Rules of Nationality and Origin:

Delegates (and recipients of PA Grants, when they co-finance) may use their Rules of Nationality and Origin as long as such rules do not exclude those which are set out in the specific EU Basic Act financing the Action.

Further clarification of the abovementioned concepts can be found in Chapter 3 of the DEVCO COMPANION: <http://intragate.ec.europa.eu/dg/devco/companion/document.do?nodeNumber=3>

Indirect Management:

For further information on Indirect Management, please refer to Sections 3.1.1.2. and 3.1.1.3. of the DEVCO COMPANION.

Pillar Assessment:

For further information on the Pillar Assessment, please refer to Sections 3.1.1.5 of the DEVCO COMPANION.

The list of International Organisations and national agencies assessed by the European Commission in accordance with the new FR can be consulted here: <https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/audit/compliance-assessment/Pages/index.aspx> (For Commission services only).

Article 2 - General obligations

Implementation of the Action

- 2.1 The Organisation is responsible for the implementation of the Action described in Annex I of the Agreement, regardless whether the activities are carried out by the Organisation itself, an Affiliated Entity, a Contractor or a Grant Beneficiary. Both Parties will endeavour to strengthen their mutual contacts with a view to foster the exchange of information throughout the implementation of the Action. To this end, the Organisation and the Contracting Authority shall participate in coordination meetings and other jointly organised common activities, and the Organisation shall invite the European Commission to join any donor committee which may be set up in relation to the Action.

Responsibility

- 2.2 The Organisation shall be responsible for the performance of the obligations under this Agreement with a due professional degree of care and diligence, which means that it shall apply the same level of duty and care which it applies in managing its own funds.
- 2.3 Under Delegation Agreements, the Organisation shall have full financial responsibility towards the Contracting Authority for all funds including those unduly paid to or incorrectly used by Contractors or Grant Beneficiaries. The Organisation shall take measures to prevent, detect and correct irregularities and fraud when implementing the Action. To this end, the Organisation shall carry out, in accordance with the principle of proportionality and its positively assessed Regulations and Rules, ex-ante and/or ex-post controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the Action financed by the EU is effectively carried out and implemented correctly. The Organisation shall inform the European Commission of irregularities and fraud detected in the management of EU funds and the measures taken. Where funds have been unduly paid to or incorrectly used by Contractors or Grant Beneficiaries, the Organisation shall take all applicable measures in accordance with its own Regulations and Rules to recover those funds, including, where appropriate, by bringing legal proceedings and by endeavouring to assign claims against its Contractors or Grant Beneficiaries to the Contracting Authority or the European Commission. Where the Organisation has exhausted such measures and the non-recovery is not the result of error or negligence on the part of the Organisation, the Contracting Authority will consider the amounts that could not be recovered from Contractors and/or Grant Beneficiaries as eligible costs of the Action.

In light of *Article 2.1* of the General Conditions, the Organisation is held responsible for the performance of its own obligations under the Agreement, as well as for those of Affiliated Entities, Contractors and/or Grant Beneficiaries.

Indicators may be changed pursuant to *Article 11.3* of the General Conditions. They can be changed unilaterally by the Organisation, with the Agreement of the Contracting Authority.

Where PA Grants are signed within the context of direct awards, the Agreement may not have the purpose or the effect of introducing changes that would call into question the decision on the award. Where the PA Grant Agreement has been signed following a call for proposals, the changes should ensure the equal treatment of applicants (see *Article 11.4* of the General Conditions).

The Organisation is responsible for managing the funds with the same care as it would manage its own funds through the use of its own Regulations and Rules.

For the purpose of this Article, please note that funds unduly paid to or incorrectly used by Contractors or Grant Beneficiaries can only be considered eligible for the EC if the loss of the funds has not derived from any error or negligence on the part of the Organisation and if the Organisation has taken all applicable measures in accordance with its own Regulations and Rules to recover the funds. This may include the recovery through legal proceedings.

The assessment on whether all the applicable measures were taken should be based on the following criteria:

- a) it is clear that the Organisation applied the same level of duty of care it normally applies to its own funds;
- b) the best efforts of the Organisation and all the measures concretely taken were duly documented;
- c) in case a possible measure was not taken, the Organisation documented a reasonable justification for not doing it, as well as it demonstrated it would not have taken such a measure regarding the recovery of its own funds.

Other obligations

- 2.4 The Organisation undertakes to ensure that the obligations stated in this Agreement under **Articles 2.6, 5**-Conflict of interests, 7-Data protection, 8-Communication and Visibility, 16-Accounts and archiving and **Article 17**-Access and financial checks apply, where applicable, to all Contractors and Grant Beneficiaries.
- 2.5 The Organisation shall notify the Contracting Authority and the European Commission without delay of any substantial change in the rules, procedures and systems applied in the implementation of the Action. This obligation concerns in particular (i) substantial changes affecting the pillar assessment undergone by the Organisation or (ii) those which may affect the conditions for eligibility provided for in the applicable legal instruments of the EU. The Parties shall use their best efforts to resolve amicably any issues resulting from such changes. The Contracting Authority reserves the right to adopt or require additional measures in response to such changes. In the event an agreement on such measures or other solutions cannot be reached between the Parties, either Party may terminate the Agreement according to **Article 13.3**.
- 2.6 The Organisation shall promote the respect of human rights and respect applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards.
- 2.7 Where the European Commission is not the Contracting Authority, it shall not be a party to this Agreement, which shall only confer on it rights and obligations where explicitly stated. This is without prejudice to the European Commission's role in promoting a consistent interpretation of the terms of this Agreement.

“Where applicable” refers to situations in which any of the listed provisions may be of relevance for the subject matter of the contract.

E.g. in the case of contracts for the supply of equipment, no data protection rule is likely to apply.

For the purpose of this Article, the notion of substantial change is to be assessed by the Organisation, with changes deemed to be substantial if they would have affected the pillar assessment. When in doubt, the Organisation should always notify the Commission of the changes.



Article 3 - Obligations regarding information and reporting

General issues

3.1 The Organisation shall provide the Contracting Authority with full information on the implementation of the Action. To that end, the Organisation shall include in Annex I a work plan at least for the first year of the Implementation Period (or the whole Implementation Period where it is less than one year). The Organisation shall submit to the Contracting Authority progress report(s) and a final report in accordance with the provisions below. These reports shall consist of a narrative part and a financial part.

The “Implementation Period” starts at a date as defined in *Article 2.2* of the Special Conditions and it takes the number of months as specified in *Article 2.3* of the Special Conditions. The Implementation Period ends at the conclusion of that number of months.

The “Implementation Period” should be distinguished from the “End Date” as defined in *Article 1*.

PAGODA does not impose a template for reporting and hence the Organisation is free to use their own format, provided that the minimum requirements for reporting foreseen in this Article are met, as well as possible additional reporting requirements foreseen under *Article 4* of the Special Conditions.

Therefore, an Organisation can use its own templates/format (e.g. resources-based budget or activity-based budget). However, in the context of calls for proposals, Organisations have to use the templates published with the relevant call.

Article 3 of the General Conditions sets out minimum requirements that the financial and narrative reports must comply with. These reports should be laid out in such a way as to allow monitoring of objective(s), the means envisaged and employed. The level of detail in the reports shall match that of Annexes I (Description of the Action) & III (Budget).

As a general principle, there should be one progress report for every twelve-months of the implementation. This frequency of reporting is in principle considered sufficient by the Contracting Authority. To request more than one report per year represents an exception to this general rule. Where specific circumstances require an increase in the frequency of reports, this will be agreed by the parties beforehand, and explicitly stipulated in the Special Conditions of the Agreement (namely *Article 4.3*).

3.2 Every report, whether progress or final, shall provide a complete account of all relevant aspects of the implementation of the Action for the period covered. The report shall describe the implementation of the Action according to the activities envisaged in Annex I as well as the degree of achievement of its Results (Outcomes or Outputs) as measured by corresponding Indicators. The report shall be laid out in such a way as to allow monitoring of the objective(s), the means envisaged and employed. The level of detail in any report shall match that of Annexes I and III.

The narrative report will maintain the level of detail of the Annex I (Description of Action) and it should include the sections listed in *Article 3.7*.

The financial report will be presented in the same level of detail as the budget lines established in the Annex III (contractual Budget).

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- 3.3 Where the Action of the Organisation lasts longer than the Implementation Period of this Agreement, the Contracting Authority may request – in addition to the final reports to be submitted under **Article 3.8** – the final reports of the Action, once available.
- This should not interfere with the Contracting Authority providing the final payment of the European Union contribution in line with Article 20.**
- For the sake of clarity, the «final reports» mentioned at the end of this Article refer to the reports linked to the closure of the Action of the Organisation. It is to be distinguished from the final report to be submitted within 6 months after the end of the Implementation Period of the Agreement, signed with the Contracting Authority, as stated in Article 3.8.**
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- 3.4 Any alternative or additional reporting requirement shall be set out in the Special Conditions.
- The Parties may agree on additional reporting requirements which deviate from the minimum criteria laid out in Article 3, provided that the minimum requirements foreseen in any relevant Framework Administrative Arrangement/ Agreement, if applicable, are respected.**
- In case additional reporting requirements, in line with the minimum criteria stated in Article 3, are agreed, a derogation request is not needed. These should be introduced in a new paragraph under Article 4.3 of the Special Conditions.**
- Alternative or additional reporting requirements which deviate from the criteria laid out in Article 3 should be mutually agreed, justified and appropriate in the specific circumstances. In such a case, a derogation should be foreseen under the Special Conditions (Article 7.2) .**
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- 3.5 The Contracting Authority may request additional information at any time, providing the reasons for that request. Subject to the Organisation's Regulations and Rules, such information shall be supplied within 30 days of receipt of the request. The Organisation may submit a reasoned request to extend the 30-day deadline.
- The additional information requested by the Commission under this Article shall be reasonable and relevant.**
- This Article does not impose additional reporting requirements nor should it be used to carry out a desk review, verification or audit, which are regulated under Article 17 of the General Conditions and, if applicable, under the Verification Annex to the Framework Agreement signed with the Organisation.**
- No request for extension of the deadline should be unreasonably withheld.**
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- 3.6 The Organisation shall notify the Contracting Authority without delay on any circumstances likely to adversely affect the implementation and management of the Action or to delay or jeopardise the performance of the activities.
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Content of the reports

3.7 The progress report(s) shall directly relate to this Agreement and shall at least include:

- a) summary and context of the Action;
- b) actual Results: an updated table based on a logical framework matrix including reporting of Results achieved by the Action (Outcomes or Outputs) as measured by their corresponding Indicators, agreed baselines and targets, and relevant data sources;
- c) activities carried out during the reporting period (i.e. directly related to the Action and described in this Agreement);
- d) information on the difficulties encountered and measures taken to overcome problems and eventual changes introduced;
- e) information on the implementation of the Visibility and Communication Plan (Annex VI) and any additional measures taken to identify the EU as source of financing;
- f) information on the costs incurred as well as the legal commitments entered into by the Organisation during the reporting period;
- g) a summary of controls carried out, if any under PA Grant Agreements, and available final audit reports in line with the Organisation's policy on disclosure of such controls and audit reports. Where errors and weaknesses in systems were identified, analysis of their nature and extent as well as information on corrective measures taken or planned shall also be provided;
- h) where applicable, a request for payment;
- i) work plan and forecast budget for the next reporting period.

3.8 The final report shall cover the entire period of implementation and include:

- a) all the information requested in **Article 3.7 a)** to h);
- b) a summary of the Action's receipts, payments received and of the eligible costs incurred;
- c) where applicable, an overview of any funds unduly paid or incorrectly used which the Organisation could or could not recover itself;
- d) under a Delegation Agreement, the exact link to the webpage where, according to **Article 21.1**, information on Grant Beneficiaries and Contractors is available;
- e) for EU External Actions and CFSP, if relevant, details of transfers of equipment, vehicles and remaining major supplies mentioned in **Article 9**;
- f) in the case of Multi-donor Actions and where the EU contribution is not earmarked, a confirmation from the Organisation that an amount corresponding to that paid by the Contracting Authority has been used in accordance with the obligations laid down in this Agreement and that costs that were not eligible for the Contracting Authority have been covered by other donors' contributions.

Article 3.7 b)

For the progress made in the achievement of the results (*Article 3.7.b*)), information on Outputs and/or Outcomes should be provided.

The Logical Framework presented for the Description of the Action should be updated for reporting purposes by adding one column providing the actual value of the results/indicators for each relevant level of the chain of the results. Any necessary update/modification of the targets, baselines or sources of verification related to these indicators should be made in the same Logical Framework of the Action with due consideration to the rules for amendments (see *Article 11* below).

Article 3.7 f)

Financial reports should reflect the costs incurred and the amounts subject to legal commitments, presented in 2 separate columns, which correspond to the pertaining reporting period. This reference is crucial for the assessment of the minimum thresholds for further pre-financing, as set out in Article 19 of the General Conditions: 70% of the immediately preceding payment and 100% of previous payments, if any.

Article 3.7 i)

The forecast budget for the next reporting period must be provided to allow defining the amount of the next pre-financing payment when the latter is not yet defined in the Special conditions.

Article 3.8 c)

Explanation on the measures that have been put in place to recover the funds and why such measures were not successful must be provided by the Organisation on the report. Please see the Assessment set out under the explanation to the *Article 2.3*.

- 3.9 The Organisation shall submit a report for every reporting period as specified in the Special Conditions as from the commencement of the Implementation Period, unless otherwise specified in the Special Conditions¹. Reporting, narrative as well as financial, shall cover the whole Action, regardless of whether this Action is entirely or partly financed by EU funds. Progress reports shall be submitted within 60 days after the period covered by such report. For EU External Actions and CFSP, the final report shall be submitted at the latest six months after the end of the Implementation Period. For Internal Policies, the final report shall be submitted at the latest three months after the end of the Implementation Period.

1. For EU External Actions and CFSP, by default, the reporting period is every 12 months as from the commencement of the Implementation Period.

> Management declaration and audit or control opinion under Delegation Agreements

Management declaration

- 3.10 Every progress or final report shall be accompanied by a management declaration in accordance with the template of Annex VII, unless, in the fields of EU External Actions and CFSP, **Article 1.5** of the Special Conditions states that an annual management declaration shall be sent to the European Commission headquarters, separately from the reports provided under this Agreement.

The request to issue a management declaration is only applicable to Delegation Agreements and it is required for both International Organisations and National Agencies. This obligation is deemed to be complied with if one of two procedures is followed:

- a) In case there is an arrangement with the European Commission for this purpose, the Management Declaration shall be sent annually to DEVCO R.3 and it will cover all Delegation Agreements with the Organisation. This arrangement can either be included in the Framework Administrative Arrangement/ Agreement or established through an exchange of letters.
- b) If no arrangement is in place, the Management Declaration shall be sent with every progress and final report of each Delegation Agreement.

The list of arrangements with the Organisations can be found on DEVCO R/3 Intranet: <https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/financing-contracting-guides/companion/Pages/management-declaration-control-audit-opinion.aspx>.

Audit or control opinion for non-international organisations

3.11 In case the Organisation is not an international organisation, an audit or control opinion shall be provided in accordance with internationally accepted audit standards, establishing whether the accounts give a true and fair view, whether the control systems in place function properly, and whether the underlying transactions are managed in accordance with the provisions of this Agreement. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration mentioned above.

3.12 Such audit or control opinion shall be provided up to 1 month following the management declaration sent with every progress or final report, unless, in the field of EU External Actions, **Article 1.5** of the Special Conditions states that the management declaration and the audit or control opinion shall be sent annually to the European Commission headquarters separately from the reports provided under this Agreement.

Under PAGO DA 2, the request to issue an Audit or Control Opinion is only applicable to Delegation Agreements and it is only required for National Agencies (it is no longer required for International Organisations).

The Audit or Control Opinion should refer to the financial transactions of the Action(s) funded by the EU. That is to say, an overall financial audit on the Organisation or its annual audited balance sheets do not meet these requirements.

The list of arrangements with the Organisations, link on DEVCO R/3 Intranet: <https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/financing-contracting-guides/companion/Pages/management-declaration-control-audit-opinion>.

The Audit or Control Opinion can be issued by an operationally independent audit body from the Organisation.

This obligation is deemed to be complied with if one of these two procedures is followed:

- a) In case there is an arrangement with the European Commission to provide an annual Management Declaration and Audit or Control Opinion, such documents should be sent to DEVCO R.3 and they will cover all Delegation Agreements with the Organisation. Please note that if an annual Management Declaration is provided, the Audit or Control Opinion should be provided annually as well;
- b) If no arrangement is in place, the Audit or Control Opinion should be sent for each Delegation Agreement within 1 month following submission of the corresponding Management Declaration.

> Currency for reporting

3.13 The reports shall be submitted in the Currency of the Agreement as specified in **Article 3** of the Special Conditions.

The «Currency of the Agreement» is stated in the Special Conditions. It can be either EUR or the accounting currency of the Organisation (**Article 3.1** of Special Conditions).

In case the Currency of the Agreement is the accounting currency of the Organisation, every report and payment request should be made in such a currency. The only contractual reference in EUR should be the total amount of the EU contribution (which corresponds to the EU budgetary commitment for the Action).

It is expected that in the majority of the cases the Organisation will set its accounting currency as Currency of the Agreement. Consequently, for the purpose of reporting there will be no need to set a conversion rule from the accounting currency of the Organisation to EUR.

- 3.14 The Organisation shall convert legal commitments, the Action's receipts and costs incurred in currencies other than the accounting currency of the Organisation according to its usual accounting practices.

By extension of the scope of *Article 3.14*, for the cases in which the Currency of the Agreement is set in EUR despite the accounting currency of the Organisation being other than EUR, the conversion should be made according to the usual accounting practices of the Organisation. It is stressed that these accounting practices should be those applied by the Organisation to all donors and should not be set solely for the reporting purposes related to the specific EU funded Action.

Failure to comply with reporting obligations

- 3.15 If the Organisation is unable to present a progress or final report and the accompanying documents by the end of the deadline set out in *Article 3.9*, the Organisation shall inform the Contracting Authority in writing of the reasons, and shall provide a summary of the state of progress of the Action and, where applicable, a provisional work plan for the next period. If the Organisation fails to comply with this obligation for two (2) months, following the deadline set out in *Article 3.9*, the Contracting Authority may terminate the Agreement in accordance with *Article 13*, refuse to pay any outstanding amount and recover any amount unduly paid.

It is understood that the two-month period refers to the failure to inform the Contracting Authority of the reasons for the delay and the failure to provide the summary of the state of progress of the Action.

Article 4 - Liability towards third Parties

- 4.1 The European Commission shall not under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Organisation while the Action is being carried out or as a consequence of the Action. The European Commission shall not therefore accept any claim for compensation or increase in payment in connection with such damage or injury.
- 4.2 The European Commission shall not under any circumstances or for any reason whatsoever be held liable towards third parties, including liability for damage or injury of any kind sustained by them in respect of or arising out of the implementation of the Action.

- 4.3 The Organisation shall discharge the European Commission of all liability associated with any claim or action brought as a result of an infringement of the Organisation's Regulations and Rules committed by the Organisation or Organisation's employees or individuals for whom those employees are responsible, or as a result of a violation of a third party's rights in the context of the implementation of the Action.

Article 5 - Conflict of interests

- 5.1 The Organisation shall refrain, in accordance with its Regulations and Rules, from any action which may give rise to a conflict of interests.

The obligation established under this provision holds both a negative and a positive dimension. Not only should the Organisation refrain from acting in such a manner as to potentially interfere with an impartial and objective implementation of the Agreement, but it should also comply with the obligation to identify and take appropriate measures to avoid or resolve a conflict of interests.

In the context of Actions where the decision to finance a particular activity is based on the opinion of a Steering Committee, the decision by the Organisation to finance any project selected by a Steering Committee (whenever applicable) does not constitute *per se* a “conflict of interests” (this is often the case in Blending Facilities).

- 5.2 There is a conflict of interests where the impartial and objective exercise of the functions of any person implementing the Agreement is compromised.

Article 6 - Confidentiality

- 6.1 The Contracting Authority and the Organisation shall both preserve the confidentiality of any document, information or other material directly related to the implementation of the Action that is communicated as confidential. The confidential nature of a document shall not prevent it from being communicated to a third party on a confidential basis when the rules binding upon the Parties, or the European Commission when it is not the Contracting Authority, so require. In no case can disclosure put into jeopardy the Parties' privileges and immunities or the safety and security of the Parties' staff, Contractors or the Final Beneficiaries of the Action.

In light of this Article, any document, information or other material directly related to the implementation of the Action which is classified as “restricted”, “confidential” or “secret” by the Organisation shall not be communicated to third Parties in any form or manner. The fact that documents have been classified as “restricted”, “confidential” or “secret” by the Organisation cannot be a sufficient reason for such documents not to be communicated to the Contracting Authority, on a ‘need-to-know basis’ and only for the part pertaining to the programmes funded by the EU.

Where the European Commission is not the Contracting Authority, it should still have access to all documents communicated to the Contracting Authority and should maintain the same level of confidentiality.

- 6.2 The Parties shall obtain each other's prior written consent before publicly disclosing such confidential information unless:
- a) the communicating Party agrees to release the other Party from the earlier confidentiality obligations; or
 - b) the confidential information becomes public through other means than in breach of the confidentiality obligation by the Party bound by that obligation; or
 - c) the disclosure of confidential information is required by law or by Regulations and Rules established in accordance with the basic constitutive document of any of the Parties.
- 6.3 The Parties shall remain bound by confidentiality for five years after the End Date of the Agreement or longer as specified by the communicating Party at the time of communication.
- 6.4 Where the European Commission is not the Contracting Authority, it shall still have access to all documents communicated to the Contracting Authority and shall maintain the same level of confidentiality.

Article 7 - Data Protection

The Organisation shall ensure an appropriate protection of personal data in accordance with its applicable Regulations and Rules.

Article 8 - Communication and visibility

8.1 The Organisation shall implement the Communication and Visibility Plan detailed in Annex VI.

In the case of an Action that is co-financed by other Donors, visibility for the Commission will be provided within the Organisation's overall visibility plan for the Action. In such cases, acknowledgement of the use of EU funds, including display of the EU logo, will be effected in the same manner as for the other Donors to the Action and in accordance with the Communication and visibility manual or as per Guidelines agreed between the Organisation and the Commission.

8.2 Unless the European Commission requests or agrees otherwise, the Organisation shall take all appropriate measures to publicise the fact that the Action has received funding from the EU. Information given to the press and to the Final Beneficiaries, as well as all related publicity material, official notices, reports and publications shall acknowledge that the Action was carried out "with funding by the European Union" and shall display the EU logo (twelve yellow stars on a blue background) in an appropriate way. Publications by the Organisation pertaining to the Action, in whatever form and whatever medium, including the internet, shall carry the following disclaimer: "This document was produced with the financial assistance of the European Union. The views expressed herein can in no way be taken to reflect the official opinion of the European Union." In the case of EU External Actions and CFSP such measures shall be carried out in accordance with the Communication and Visibility Manual² published by the European Commission or with any other guidelines agreed between the European Commission and the Organisation.

As part of its regular reporting, the Organisation should inform the Commission of its efforts to advertise that the Actions were financed with EU funds.

In case the Plan is not implemented as prescribed, the Contracting Authority should immediately contact the Organisation in order to discuss and implement remedial measures.

The Communication and Visibility requirements are deemed to be substantial contractual obligations. Should the Organisation fail to comply with such obligations, together with any possible remedial measure agreed between the Parties, the Contracting Authority may use the contractual tools at its disposal, namely, the reduction of the final amount in accordance with *Article 20.3*, the suspension and the termination of the Agreement.

2. Communication and Visibility Manual for EU External Actions, available at:
https://ec.europa.eu/europeaid/funding/communication-and-visibility-manual-eu-external-actions_en

- 8.3 If during the implementation of the Action, equipment, vehicles or major supplies are purchased using EU funds, the Organisation shall display appropriate acknowledgement on such vehicles, equipment or major supplies, including the display of the EU logo (twelve yellow stars on a blue background).

Where such display could jeopardise the Organisation's privileges and immunities or the safety of the Organisation's staff or of the Final Beneficiaries, the Organisation shall propose appropriate alternative arrangements. The acknowledgement and the EU logo shall be of such a size and prominence as to be clearly visible in a manner that shall not create any confusion regarding the identification of the Action as an activity of the Organisation, nor the ownership of the equipment, vehicles or major supplies by the Organisation.

- 8.4 In the case of EU External Actions and CFSP, if in application of **Article 9.5**, the equipment, vehicles or remaining major supplies purchased using EU funds have not been transferred to the local authorities, local Co-Beneficiaries, local Grant Beneficiaries or Final Beneficiaries when submitting the final report, the visibility requirements as regards this equipment, vehicles or major supplies (in particular display of the EU logo) shall continue to apply between submission of the final report and the end of the Action, if the latter is longer. Where the Organisation retains ownership in accordance with **Article 9.6**, the visibility requirements shall continue to apply as long as the relevant equipment, vehicles or remaining major supplies are used by the Organisation.

- 8.5 Unless otherwise provided in the Special Conditions if disclosure risks threatening the Organisation's safety or harming its interests, the European Commission and the Contracting Authority (if other than the European Commission) may publish in any form and medium, including on its internet sites, the name and address of the Organisation, the purpose and amount of the EU contribution.

The Contracting Authority as a rule publishes the name and addresses of the beneficiaries of all funds.

In the event that such disclosure harms the Organisation's safety or interests (as well as the safety of its Staff) , the Contracting Authority and the Organisation may agree on specific arrangements which would have to be included in the Special Conditions.

- 8.6 The Organisation shall ensure that reports, publications, press releases and updates relevant to the Action are communicated to the addresses stated in the Special Conditions, as and when they are issued.

With respect to *Article 8.6*, the obligation to communicate Reports and other information to the Contracting Authority should be deemed fulfilled once the abovementioned documents are posted, for example, through the Donor Portal or website of the Organisation or, if applicable, through a different channel as established to the benefit of the contributors to the Action. This is the case, for example, for the IMF. If the Organisation does not have a Donor Portal available, all the documents relevant to the Action are sent to the Contracting Authority and, more specifically, to the address specified in the Special Conditions.

- 8.7 The Parties will consult immediately and strive to remedy any detected shortcoming in implementing the visibility requirements set out in this Article. This is without prejudice to measures the Contracting Authority may take in case of substantial breach of an obligation.

Article 9 - Right to use results and transfer of equipment

Right to use

9.1 Ownership of the results of the Action shall not vest in the Contracting Authority. Subject to **Article 6**, the Organisation shall grant, and shall act to ensure that any third party concerned grants the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use free of charge the results of the Action, including the reports and other documents relating to it, which are subject to industrial or intellectual property rights.

9.2 Where the results mentioned in **Article 9.1** include pre-existing rights and the Organisation cannot warrant the Contracting Authority (and the European Commission where it is not the Contracting Authority) the right to use such results, the Organisation shall accordingly inform in writing the Contracting Authority (and the European Commission, where it is not the Contracting Authority).

Transfer (EU External Actions only)

9.3 In the field of EU External Actions and CFSP, the equipment, vehicles and remaining major supplies purchased with the EU contribution in the framework of the Action shall be transferred to or remain with local authorities, local Co-Beneficiaries, local Grant Beneficiaries or Final Beneficiaries, at the latest when submitting the final report.

9.4 The documentary proof of those transfers shall not be presented with the final reports, but shall be kept for verification for the duration and along with the documents mentioned in **Article 16.2**.

Intellectual property vests in the Organisation and will not be subject to joint or co-ownership with the Contracting Authority. Where the application of **Articles 9.1** or **9.2** poses a problem, the Parties should consult one another with a view to finding a mutually acceptable solution.

By «right to use», it is understood that the Contracting Authority (and the European Commission where it is not the Contracting Authority) is not prevented from using deliverables produced in the course of the Action by any contractual or legal copyright constraint.

Articles 9.3 to 9.6 of the General Conditions do not apply if the Organisation only requests reimbursement of depreciation costs instead of the full purchase costs.

The transfer of assets or property should be in accordance with the Organisation's Regulations and Rules.

In the field of External Actions, equipment, vehicle and major supplies purchased during an Action financed by the European Union are required to be transferred to local authorities, local Co-Beneficiaries or to the final beneficiaries. However, in cases of Multi-Donor Actions, certain exemptions can be envisaged.

In multi-donor Actions which continue after the end of the Implementation Period of the EU contribution-specific agreement, this transfer may take place at the end of the overall Action.

Please note that the Organisation is not required to submit copies nor originals of certificates of donation with the final report. The Organisation, however, shall keep the documentary proof of the transfer for verification along with the documents mentioned in **Article 16**.

Other aspects of the financial closure of the Agreement would not be affected (for example, a final payment due to the Organisation may not be withheld due to the project continuing beyond the timeframe of the Agreement).

9.5 By way of derogation from **Article 9.3**, the equipment, vehicles and remaining major supplies purchased with the EU contribution in the framework of Actions which continue after the end of the Implementation Period may be transferred at the end of the Action. The Organisation shall use the equipment, vehicles and remaining major supplies for the benefit of the Final Beneficiaries. The Organisation shall inform the Contracting Authority on the end use of the equipment, vehicles and remaining major supplies in the final report.

9.6 In the event that there are no local authorities, local Co-Beneficiaries, local Grant Beneficiaries or Final Beneficiaries to whom the equipment, vehicles and remaining major supplies could be transferred, the Organisation may transfer them to another Action funded by the EU or, exceptionally, retain ownership of the equipment, vehicles and remaining major supplies at the end of the Action. In such cases, it shall submit a justified written request with an inventory listing of the items concerned and a proposal concerning their use in due time and at the latest with the submission of the final report. In no event may the end use jeopardize the sustainability of the Action.

The end of the Action corresponds to the end of the Action carried out by the Organisation, which often lasts longer than the Implementation Period.

The Implementation Period corresponds to the period during which the activities must take place and related costs will be eligible to EU financing. This period is defined in *Article 2.2* and *2.3* of the Special Conditions Delegation Agreement and PA Grant Agreement.

The final report invoked in this Article refers to the one mentioned in *Article 3.3*.

The final report invoked in this Article refers to the one mentioned in *Article 3.3*.

The cases foreseen by the word «exceptionally» include the situations in which the costs for the transfer of equipment, vehicles and remaining major supplies are higher than the remaining value.

The decision on the Final Beneficiary of this transfer pertains to the Organisation and does not require prior approval by the EU.



Article 10 - Evaluation and monitoring of the Action

10.1 The Organisation shall invite representatives of the Contracting Authority and the European Commission to participate at their own costs in the main monitoring and evaluation missions relating to the performance of the Action. The Organisation shall report the results of such missions to the European Commission.

Evaluation and monitoring missions are to be distinguished from a financial verification. The former does not affect the latter.

Considering the shared principles of aid effectiveness as promoted by the Paris Declaration, the European Commission and the Organisation are encouraged to conduct joint evaluation missions.

The European Commission may perform evaluation missions as a donor. These evaluations are funded by the EU separately from the budget of the Agreement with the Organisation. Such missions should be planned and completed in a collaborative manner. For that purpose, matters as timing of the missions and questions to be addressed with the management of the Organisation will be previously discussed by both Parties. In this respect, Commission services shall ensure that notice of the intended evaluations and monitoring exercises is communicated to the Organisation as soon as this is available.

Where evaluations by the Organisation take place, the European Commission should be invited to take part in the mission and should receive the evaluation report. These missions should be completed in a collaborative manner, it being understood that they will be conducted under the Organisation's responsibility.

10.2 *Article 10.1* is without prejudice to any evaluation or monitoring mission which the European Commission as a donor, or the Contracting Authority at their own costs, may wish to perform. Evaluation and monitoring missions by representatives of the European Commission or Contracting Authority shall be planned ahead and completed in a collaborative manner between the staff of the Organisation and the European Commission's (or the Contracting Authority's) representatives, keeping in mind the commitment of the Parties to the effective and efficient operation of the Agreement. The European Commission (or the Contracting Authority) and the Organisation shall agree on procedural matters in advance. The European Commission (or the Contracting Authority) shall make the draft report of the evaluation or monitoring mission available to the Organisation for comments prior to final issuance. The European Commission (or the Contracting Authority) shall send the final report to the Organisation once issued.

For the evaluation or monitoring missions performed by the Commission, the Commission will inform the Organisation of the evaluation and monitoring plans at the beginning of the year and send the terms of reference for information, without prejudice to the provisions agreed in the respective Framework Agreement.



Article 11 - Amendment to the Agreement

11.1 Any amendment to this Agreement, including its annexes, shall be set out in writing in an addendum signed by both Parties. This Agreement can only be amended before the End Date.

An Addendum can be used, inter alia, in order to grant an extension of the Implementation Period.

Between the end of the implementation period and the End Date it is still possible to amend the agreement.

The Organisation cannot extend the implementation period of the Action unilaterally. Such modification needs to be set out in writing in an Addendum to the Special Conditions.

For the purpose of this Article, the reference to «Parties» also includes Co-delegatees and Co-beneficiaries. However, where the Organisation has also signed the agreement on behalf of the Co-delegatees/Co-beneficiaries (default option), there is no need for the latter to sign an amendment.

Possible modifications which might have a substantive impact on the quality of the implementation should always be discussed in detail with the Contracting Authority beforehand.

11.2 The requesting Party shall request in writing any amendment 30 days before the amendment is intended to enter into force and no later than 30 days before the End Date, unless there are special circumstances duly substantiated by it and accepted by the other Party. The other Party shall notify its decision regarding the amendment proposed in due time and in any case no later than 30 days after the date when the amendment request was received.

- 11.3 By derogation from **Articles 11.1 and 11.2**, where an amendment to Annex I and/or Annex III does not affect the main purpose of the Action, such as its objectives, strategy and priority areas, and the financial impact is limited to a transfer within a single budget heading, including cancellation or introduction of an item, or a transfer between budget headings involving a variation (as the case may be in cumulative terms) of 25 % or less of the amount originally entered (or as amended by a written addendum) in relation to each concerned heading, the Organisation may unilaterally amend Annex I and/or Annex III and shall inform the Contracting Authority accordingly in writing, at the latest in the next report. The Organisation may also, in agreement with the Contracting Authority, change the outputs, the Indicators and their related targets, baselines and sources of verification described in Annex I and in the logical framework if the change does not affect the main purpose of the Action.

With respect to the first sentence of Article 11.3, should any doubts arise as to whether the modification affects «the main purpose of the Action», the Organisation shall inform the Contracting Authority in a separate communication. In this case, the Contracting Authority shall proceed with the request as soon as possible.

As there is no standard template for the Budget (except where the Organisation responds to a call for proposals), there is room for discussion on what constitutes a budget heading. In order to avoid disputes at a later point, this should be clarified between the Contracting Authority and the Organisation when an agreement is being signed.

For the purpose of interpreting the 25% flexibility rule mentioned above, a budget heading is an aggregate of individual budget lines.

- a) In input-based budgets (e.g. in PA Grant Agreements stemming from calls for proposals), a group of budget items related to a particular type/nature of the input constitutes together a budget heading. For instance, in the EC template Budget for the Action, the sections 1 «human resources», 2 «travel», 3 «equipment and supplies», are the budget headings. Within the main budget headings the Organisation may rearrange items up to 100% without prejudice to **Article 11.5** of the General Conditions. The detailed categories of costs within a budget heading are, for example, 1.1 «salaries -gross amount local staff», 1.1.1 «Technical», 1.1.2 «Administrative/support staff», 1.2 «Salaries -gross amount, expat/int. staff...».
- b) In results-based budgets, the aggregation of the resources required to implement an activity/result could be considered as the budget heading.

In case of doubt, it is advisable to clarify what the budget headings are before the contract signature.

Within the parameters specified above (and provided the basic purpose of the Action is not affected), the Organisation can, for instance, adjust the unit rates or monthly fees for Staff which are indicative (estimate) at the time when the agreement is signed. The unit rates included in the budget headings are considered as an average and can therefore change over the time of implementation.

Procedure to determine the 25% threshold:

- a) The 25% variation is calculated on the original value of each concerned heading where funds are taken from, as well as on the original value of each corresponding heading where the funds are to be added.
- b) If more than one modification to a Budget heading is foreseen, such modifications made by the Organisation are taken into account in a cumulative way. That is to say, if a budget heading was increased by, for instance, 20% of its initial value (as set out in the Budget of the Action) through unilateral modification, that same heading can be further increased only by up to 5% of that same initial value set out in the budget of the Action (thus reaching in total up to 25% variation of its initial value). Therefore, it is not possible to proceed with several reallocations which would equal, altogether, a total variation of more than 25%.
- c) When the cumulative variations of a given budget heading exceed 25% of the budget heading's value in force, it is necessary to process a formal budget revision (Addendum) for which the EU's formal approval is required. Any amount in excess of the 25% ceiling which is not covered by an Addendum is not eligible for EU-financing.
- d) The 25% is calculated on the total value of the heading (i.e. the total amount for all years in case of multi-annual actions and/or multi-donor actions) set out in the actual Budget of the Action (original one or as put into force through an Addendum), not just on the EU's contribution.

Provided that they do not affect the main purpose of the Action, the change of the outputs, the indicators and their related targets, baselines and sources of verification described in Annex I and in the logical framework, may be agreed between the Organisation and the Contracting Authority via electronic means.

Please assess whether a standard derogation (as stated in **Article 7.2**) regarding **Article 11.3** is needed in each agreement.

11.4 The method described in **Article 11.3** shall not be used to amend the contingency reserve, nor the rate for remuneration/indirect costs or the amounts or rates of simplified cost options. Under a PA Grant Agreement, amendments shall not have the purpose or the effect of making such changes to the Agreement as would call into question the award decision or, where applicable, be contrary to the equal treatment of applicants.

11.5 Annex VI may be changed by the Organisation in agreement with the European Commission, without the need for a formal addendum to the Agreement.

11.6 Changes of address and of bank account shall be notified in writing to the Contracting Authority. Where applicable, changes of bank account must be specified in the request for payment, using the financial identification form attached as Annex IV.

The restrictions set forth in the second sentence of the Article should apply both to unilateral amendments in accordance with *Article 11.3* of the General Conditions and to written Addenda signed by both Parties.

Where a PA Grant Agreement is the result of a direct award, written Addenda may also be used to increase the amount of the EU contribution.

The Organisation and the European Commission may consider to communicate and achieve agreement via electronic means.

This does not constitute a substantial change and does not require being formalised via a double-signatory document.

Where a payment is to be made to a bank account which is already known to the European Commission (i.e. the Organisation had already signed a contract before), the Organisation may provide a copy of the relevant financial identification form. There is no need to provide a new original form. The same applies to the Legal Entity File (LEF). Where the Organisation has signed a contract before, the Legal Entity Number which has been attributed to the Organisation suffices.



Article 12 - Suspension

Article 12 covers the provisions on suspension in three different circumstances:

- a) suspension of the time limits of a payment
- b) suspension of the Agreement by the Contracting Authority; and
- c) suspension for exceptional circumstances.

The implications are different in each case.

Suspension of the time limit for payment

12.1 The Contracting Authority may suspend the time limit for payment following a single payment request by notifying the Organisation that either:

- a) the amount is not due; or
- b) the appropriate supporting documents have not been provided and therefore the Contracting Authority needs to request clarifications, modifications or additional information to the narrative or financial reports. Such clarifications or additional information may notably be requested by the Contracting Authority if it has doubt about compliance by the Organisation with its obligations in the implementation of the Action; or
- c) credible information has come to the notice of the Contracting Authority that puts in doubt the eligibility of the reported costs; or
- d) under a Delegation Agreement, credible information has come to the notice of the Contracting Authority that indicates a significant deficiency in the functioning of the Internal Control System of the Organisation or that the expenditure reported by the Organisation is linked to a serious irregularity and has not been corrected. In this case, the Contracting Authority may suspend the payment deadline if it is necessary to prevent significant damage to the EU's financial interests.

The suspension of the time limit of a single payment request might occur either for reasons strictly related to the payment request itself (situations under (a), first sentence of (b) and (c)), or for reasons related to the implementation of the Action which would put into question the content of the reports or the reliability of the expenditures reported (situations under the second sentence of (b) and (d)). In either case, invoking suspension shall be duly substantiated by the Contracting Authority.

Once the payment request is received, the deadline for payment starts running. In the situation listed in *Article 12*, the Contracting Authority is entitled to “stop the clock”.

The time limits are: i) with respect to the pre-financing instalment as set out in *Article 4.2* of the Special Conditions, 30 days from the receipt of the Agreement signed by both Parties as established in *Article 19*; ii) with respect to further pre-financing instalments and the final payment, 90 days from the receipt of a payment request accompanied by a progress or final report as laid out in *Article 19*.

Nonetheless, the suspension of the time limit does not suspend the implementation of the Action nor the eligibility of the costs.

The suspension of the time limit for payment should be applied carefully since the non-provision of a payment may put into jeopardy the implementation of the Action as well as it can have serious negative implication for the Organisation and for the beneficiaries.

12.2 In the situations listed in *Article 12.1* the Contracting Authority shall notify to the Organisation as soon as possible and in any case within 30 days from the date on which the payment request was received the reasons for the suspension, specifying, where applicable, the additional information required. Suspension shall take effect on the date when the Contracting Authority sends the notification stating the reasons for the suspension. The remaining payment period shall start to run again from the date on which the requested information or revised documents are received or the necessary further checks are carried out. If the requested information or documents are not provided within the deadline fixed in the notification or are incomplete, payment may be made on the basis of the partial information available.

The suspension of the time limit is encoded in the system and takes effect on the date when the Contracting Authority sends the notification to the Organisation stating the reasons for suspension. This notification has to take place within 30 days from the reception of the payment request. After this deadline, the time limit can no longer be suspended.

The suspension of the time limit for the payment may be lifted, if the Organisation, in its observations submitted pursuant to *Article 12.2*, confirms that remedial measures are being taken to the satisfaction of the Contracting Authority.

When the observations are not submitted or are incomplete, it is still possible to proceed to a partial payment on the basis of the information available.

Suspension of the Agreement by the Contracting Authority

- 12.3 The Contracting Authority may suspend the implementation of the Agreement, fully or partly, if:
- a) the Contracting Authority has proof that substantial errors, irregularities, fraud or breach of substantial obligations have been committed by the Organisation in the procedure of its selection, in its pillar assessment or in the implementation of the Action;
 - b) under a Delegation Agreement, the Contracting Authority has proof that systemic errors have occurred which call into question the reliability of the Organisation's Internal Control System or the legality and regularity of the underlying transactions;
 - c) the Contracting Authority has proof that the Organisation has committed systemic or recurrent errors, irregularities, fraud or breach of obligations under other agreements funded by EU funds provided that those errors, irregularities, fraud or breach of obligations have a material impact on this Agreement.

- 12.4 Before suspension, the Contracting Authority shall formally notify the Organisation of its intention to suspend, inviting the Organisation to make observations within 10 days from the receipt of the notification. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the Contracting Authority decides to pursue the suspension, the Contracting Authority may suspend all or part of the implementation of this Agreement serving 7 days' prior notice. In case of suspension of part of the implementation of the Agreement, upon request of the Organisation, the Parties shall enter into discussions in order to find the arrangements necessary to continue the part of the implementation which is not suspended. Any expenditure or costs incurred by the Organisation during the suspension and related to the part of the Agreement suspended shall not be reimbursed or covered by the Contracting Authority. Following suspension of the implementation of the Agreement, the Contracting Authority may terminate the Agreement in accordance with **Article 13.2**, recover amounts unduly paid and/or, in agreement with the Organisation, resume implementation of the Agreement. In the latter case the Parties will amend the Agreement where necessary.

Suspension for exceptional circumstances

- 12.5 The Organisation may decide to suspend the implementation of all or part of the Action if exceptional or unforeseen circumstances beyond the control of the Organisation make such implementation impossible or excessively difficult, such as in cases of Force Majeure. The Organisation shall inform the Contracting Authority immediately and provide all the necessary details, including the measures taken to minimise any possible damage, and the foreseeable effect and date of resumption.

When the Contracting Authority considers that there is evidence of one of the situations listed in *Article 12.3*, it may decide to suspend the Agreement.

Costs incurred during the suspension of the Agreement are not eligible.

It should be noted that in Multi-donor Actions, the suspension of the Agreement by the Contracting Authority does not result in the suspension of the Action, which might continue with respect to the part of the Action that is financed by other donors.

The Agreement may be suspended in full or in part. In case of partial suspension, it might be necessary to find practical arrangements with the Organisation in order to continue the part of the implementation which is not suspended. In such a case, the costs related to the part of the Agreement that is not suspended remain eligible.

If, following the suspension, the implementation is resumed, the Agreement might have to be amended to be adjusted to the new situation (for example, for an extension of the implementation period).

This provision covers the suspension of the implementation of the Action by the Organisation. This includes Force Majeure (as defined in *Article 1*) and other exceptional or unforeseen circumstances which are beyond control of the Organisation. It covers, inter alia, the situations where there is an unacceptable risk to the security of staff members, experts or their contractors involved in the implementation of the Action. More specifically, the Organisation may cancel some or all of the scheduled activities if such a situation arises.

The suspension takes effect immediately but the Organisation should immediately inform the Contracting Authority and specify what measures are taken to minimise the financial damage and the foreseeable date of resumption.

The Organisation may decide to suspend or terminate the implementation of all or part of the Action if the suspension renders it impossible for the Organisation to continue the implementation.

- 12.6 The Contracting Authority may also notify to the Organisation the suspension of the implementation of the Agreement if exceptional circumstances so require, in particular:
- a) when a relevant EU Decision identifying a violation of human rights has been adopted;
 - b) in cases such as crisis entailing a change of EU policy.

- 12.7 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 or exceptional circumstances as set forth under **Articles 12.5** and **12.6** provided it takes any measure to minimise any possible damage.

- 12.8 In the situations listed in **Articles 12.5** and **12.6**, the Parties shall minimise the duration of the suspension and shall resume implementation once the conditions allow. During the suspension period the Organisation shall be entitled to the reimbursement of the minimum costs, including new legal commitments, necessary for a possible resumption of the implementation of the Agreement or of the Action. The Parties shall agree on such costs, including the reimbursement of legal commitments entered into for implementing the Action before the notification of the suspension was received which the Organisation cannot reasonably suspend, reallocate or terminate on legal grounds. This is without prejudice to any amendments to the Agreement which may be necessary to adapt the Action to the new implementing conditions, including, if possible, the extension of the Implementation Period and, for Delegation Agreements, the contracting deadline, or to the termination of the Agreement in accordance with **Article 13.3**. In case of suspension due to Force Majeure or if the Action is a Multi-donor Action, the contracting deadline under Delegation Agreements and the Implementation Period are automatically extended by an amount of time equivalent to the duration of the suspension.

In this case the reasons for suspension are determined by external events that in most cases require immediate action. Under such circumstances no prior consultation with the Organisation is required and the suspension takes effect on the date stated in the written notification.

The exclusion of responsibility is subject to the conditions that:

- a) the breach is determined by the exceptional circumstances or Force Majeure; and,
- b) that the party concerned has taken any possible measures to minimise the damage.

In principle, during the suspension of the implementation of the Agreement, the costs are not eligible. However, under exceptional circumstances, such as crisis, the Organisation is likely to need to bear some costs or enter into new legal commitments in order to ensure the security of staff and supplies and guarantee a minimum structure in view of the possible resumption of the Agreement (e.g., costs of warehouse, repatriation of staff, salaries of staff which cannot be allocated to other projects and for which the termination of the contract would not be cost-effective, indemnities or damages which the Organisation might have to pay as a direct consequence of the suspension). These costs would therefore be considered eligible.

These costs may also include the reimbursement of legal commitments entered into before the notification of the suspension was received by the Organisation, if these commitments cannot be reasonably suspended, reallocated or terminated.

The Parties should agree on the amount of minimum costs, including legal commitments. To this end, following the notification of the suspension, the Organisation will make a proposal to the Contracting Authority where it justifies the reasons of such costs for the Contracting Authority's approval. Agreement to cover minimum costs should not be unreasonably withheld.

Upon resumption, the Agreement might require amendments to suit the new situation.

The Organisation should inform the Contracting Authority through a written note that it resumes the implementation once the conditions allow.

In case of suspension for Force Majeure or in Multi-Donor Actions, the Implementation Period and the Contracting Deadline are automatically extended by the time equivalent to the duration of suspension without need of an amendment to the Agreement. Under Delegation Agreements and in case the Action is not a Multi-Donor Action, the Contracting Deadline can only be extended, provided that it does not exceed three years after the signature of the Agreement.

Article 13 - Termination of the Agreement

13.1 Without prejudice to any other provision of these General Conditions or penalties foreseen in the EU Financial Regulation where applicable, and with due regard to the principle of proportionality, the Contracting Authority may terminate the Agreement if the Organisation:

- a) fails to fulfil a substantial obligation incumbent on it under the terms of the Agreement;
- b) is guilty of misrepresentation or submits false or incomplete statements to obtain the EU contribution or provides reports that do not reflect reality to obtain or keep the EU contribution without cause;
- c) is bankrupt or being wound up, or is subject to any other similar proceedings;
- d) is guilty of grave professional misconduct proven by any justified means;
- e) has committed fraud, corruption or any other illegal activity to the detriment of the EU's financial interests on the basis of proof in the possession of the Contracting Authority;
- f) fails to comply with the reporting obligations in accordance with **Article 3.15**;
- g) has committed any of the failings described in **Article 12.3** on the basis of proof in the possession of the Contracting Authority.

13.2 Before terminating the Agreement in accordance with **Article 13.1**, the Contracting Authority shall formally notify the Organisation of its intention to terminate, inviting the Organisation to make observations (including proposals for remedial measures) within 30 days from the receipt of the notification. During this period and until the termination takes effect, the Contracting Authority may suspend the time limit for any payment in accordance with **Article 12.2** as a precautionary measure informing the Organisation immediately in writing. If the Organisation does not submit observations, or if, after examination of the observations submitted by the Organisation, the Contracting Authority decides to pursue the termination, the Contracting Authority may terminate the Agreement serving 7 days' prior notice. During that period the Organisation may refer the matter to the responsible director in the European Commission. Where the Contracting Authority is the European Commission, the termination will take effect if and when confirmed by the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not suspend the effects of the decision of the Contracting Authority. In case of termination, the Contracting Authority may demand full repayment of any amounts paid in excess of the final amount determined in accordance with **Article 20** after allowing the Organisation to submit its observations. Neither Party shall be entitled to claim indemnity by the other Party on account of the termination of this Agreement.

The penalties foreseen in the EU Financial Regulation refer to administrative and financial penalties that the Contracting Authority under certain circumstances may impose in the context of PA Grant Agreements without prejudice to the privileges and immunities of the Organisation.

The decision to terminate the Agreement is a last resort decision and should take into account the principle of proportionality.

Professional misconduct (most notably the specific cases of grave professional misconduct under *Article 106* of the EU Financial Regulation) shall be understood as "all wrongful conduct which has an impact on the professional credibility of the operator at issue and not only the violations of ethical standards in the strict sense of the profession to which that operator belongs, which are established by the disciplinary body of that profession or by a judgement which has force of res judicata". The fact that the misconduct must be "grave" implies that the conduct denotes a wrongful intent or negligence of certain gravity. Accordingly, any incorrect, imprecise or defective performance of a contract or a part thereof could demonstrate the limited professional competence of the economic operator at issue, but does not automatically imply grave misconduct.

The Contracting Authority should notify the Organisation of its intention to terminate and the reasons thereof. The Organisation has 30 days from the receipt of the notification to submit its observations. The Organisation may submit a justified request for an extension of the 30-day deadline which shall not be unreasonably denied by the Contracting Authority.

The costs incurred during the formal contradictory procedure and the 7 days prior notice remain eligible and will be reimbursed provided they satisfy the eligibility criteria.

During the 7 days prior notice the Organisation can refer the matter to the responsible Director. This escalation has the effect of suspending the decision to terminate and the termination will take effect only if and when confirmed by the Director only where the Commission is the Contracting Authority.

In the event of termination of the Agreement pursuant to *Article 13.2*, the final amount of the EU contribution shall be determined in accordance with *Articles 20* on the basis of the part of the Action carried out up to the date of termination.

No indemnity or damage can be claimed by either Party on the account of the termination.

13.3 If, at any time, either Party believes that the purpose of the Agreement can no longer be effectively or appropriately carried out, it shall consult the other Party. Failing agreement on a solution, either Party may terminate the Agreement by serving 60 days written notice. In this case, the final amount shall cover:

- a) payment only for the part of the Action carried out up to the date of termination;
- b) in the situations described in **Articles 12.5** and **12.6**, the unavoidable residual expenditures incurred during the notice period; and,
- c) in the situations described in **Articles 12.5** and **12.6** under a Delegation Agreement reimbursement of legal commitments the Organisation entered into for implementing the Action before the written notice on termination was received by it and which the Organisation cannot reasonably terminate on legal grounds.

The Contracting Authority shall recover the remaining part in accordance with **Article 15**.

In addition to the situations listed in *Article 13.1*, the Agreement can be terminated if either Party believes that the purpose of the Agreement can no longer be carried out. In this case, the Parties have to consult each other to find a solution and if no agreement can be found, either Party may terminate the Agreement by serving 60 days written notice.

The costs incurred during the consultations and the 60 days prior notice remain eligible and will be reimbursed provided they satisfy the eligibility criteria.

The final amount of the EU contribution shall be determined in accordance with *Article 20* on the basis of the part of the Action usefully carried out up to the date of termination.

In addition, when the termination is due to reasons which are beyond the control of the Organisation, the Organisation is also entitled to the reimbursement of the unavoidable residual expenditures (i.e. costs related to the closure of the Action) incurred during the notice period. That is to say that the costs necessary for the closure of the activities financed under the Agreement. In the same situations under Delegation Agreements, the Organisation is also entitled to the reimbursement of the costs of the legal commitments it entered into for implementing the Action before the written notice was received and which the Organisation cannot reasonably terminate on legal grounds.

13.4 In the event of termination, a final report and a request for payment of the balance have to be submitted according to **Articles 3.8, 3.9** and **19**. The Contracting Authority shall not reimburse or cover any expenditure or costs which are not included or justified in a report approved by it.



Article 14 - Applicable law and settlement of disputes

14.1 The Parties shall endeavour to amicably settle any dispute or complaint relating to the interpretation, application or validity of the Agreement, including its existence, or termination.

Amicable settlement is conceived of as the primary remedy for any disagreement concerning the interpretation, application or fulfilment of the Agreement.

In case the Contracting Authority is a Partner Country, the disputed issue can be referred to the Commission for mediation purposes, particularly when the disagreement concerns questions of interpretation of the contractual templates.

The mediation by the Commission should come after the amicable settlement procedure has failed.

14.2 Where the Organisation is not an international organisation and the European Commission is the Contracting Authority, this Agreement is governed by EU law, complemented if necessary by the relevant provisions of Belgian law. In the absence of an amicable settlement in accordance with **Article 14.1** above, the General Court, or on appeal the Court of Justice of the European Union, has sole jurisdiction. Such actions must be brought under **Article 272** of the Treaty on the Functioning of the EU (TFEU).

In case the Organisation is not an international organisation, and no agreement is reached following the settlement attempt, the Parties may refer the matter to the competent judicial court – the General Court of European Court of Justice or, on appeal, the Court of Justice of the European Union. The applicable law is the EU Law, complemented by the relevant provisions of Belgian Law.

14.3 Where the Organisation is not an international organisation and the European Commission is not the Contracting Authority, the Agreement shall be governed by the law of the country of the Contracting Authority and the courts of the country of the Contracting Authority shall have exclusive jurisdiction, unless otherwise agreed by the Parties. The dispute may, by common agreement of the Parties, be submitted for conciliation to the European Commission. If no settlement is reached within 120 days of the opening of the conciliation procedure, each Party may notify the other that it considers the procedure to have failed and may submit the dispute to the courts of the country of the Contracting Authority.

14.4 Where the Organisation is an international organisation:

- a) nothing in the Agreement shall be interpreted as a waiver of any privileges or immunities accorded to any Party by its constituent documents, privileges and immunities agreements or international law;
- b) in the absence of amicable settlement in accordance with **Article 14.1** above, any dispute shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States, as in effect on the date of entry into force of this Agreement. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The arbitration proceedings must take place in the Hague and the language used in the arbitral proceedings will be English. The arbitrator's decision shall be binding on all Parties and there shall be no appeal.

In the event the Organisation is an International organisation, when no agreement is reached, following this settlement attempt, the dispute can be referred to arbitration (*Article 14.4 (b) of the General Conditions*).

Article 15 - Recovery

15.1 Where an amount is to be recovered under the terms of the Agreement, the Organisation shall repay to the Contracting Authority the amount due.

15.2 Before recovery, the Contracting Authority shall formally notify the Organisation of its intention to recover any undue amount, specifying the amount and the reasons for recovery and inviting the Organisation to make any observations within 30 days from the date of receipt of the notification. If, after examination of the observations submitted by the Organisation or if the Organisation does not submit any observations, the Contracting Authority decides to pursue the recovery procedure, it may confirm recovery by formally notifying the Organisation. If there is a disagreement between the Organisation and the Contracting Authority on the amount to be repaid, the Organisation may refer the matter to the responsible director in the European Commission within 30 days. Where the Contracting Authority is the European Commission, a debit note specifying the terms and the date for payment may be issued after the deadline for the referral to the director. Where the Contracting Authority is not the European Commission, the referral to the responsible director in the European Commission will not prevent the Contracting Authority from issuing the debit note.

15.3 If the Organisation does not make the payment by the date specified in the debit note, the Contracting Authority shall recover the amount due:

- a) by offsetting it against any amounts owed to the Organisation by the EU;
- b) by taking legal action in accordance with **Article 14**;
- c) in exceptional circumstances, justified by the necessity to safeguard the financial interests of the EU, the Contracting Authority may, when it has justified grounds to believe that the amount due would be lost, recover by offsetting before the deadline specified in the debit note without the Organisation's prior consent.

15.4 If the Organisation fails to repay by the due date, the amount due shall be increased by late payment interest calculated at the rate indicated in **Article 19.5(a)**. The interest shall be payable for the period elapsing from the day after the expiration of the time limit for payment up to and including the date when the Contracting Authority actually receives payment in full of the outstanding amount. Any partial payment shall first cover the interest.

15.5 Bank charges incurred from the repayment of amounts due to the Contracting Authority shall be borne entirely by the Organisation.

Such a notification shall be sent to the Organisation's focal point designated in the Agreement (in the Special Conditions).

It is understood that the second period of 30 days starts at the receipt of the confirmation of the recovery.

This, in practice, applies to contracts under which the Commission makes the payments to the Organisation.

15.6 Where the European Commission is not the Contracting Authority, it may, if necessary, proceed itself to the recovery.

15.7 Where the Contracting Authority is the European Commission, it may waive the recovery in accordance with the principle of Sound Financial Management and proportionality or it shall cancel the amount in the event of a mistake.

The circumstances when the Commission may waive a recovery order are set out in articles 80 of the Financial Regulation (FR) and 91 of its Rules of application (RAP).

Article 16 - Accounts and archiving

Accounting

16.1 The Organisation shall keep accurate and regular records and accounts of the implementation of the Action. The accounting Regulations and Rules of the Organisation shall apply, provided that these Regulations and Rules conform to internationally accepted standards. Financial transactions and financial statements shall be subject to the internal and external auditing procedures laid down in the Regulations and Rules of the Organisation.

In view of the numerous cases where the Court of Auditors or external auditors have identified ineligible costs due to the lack of supporting documents, the Organisation should take particular note of the very serious financial consequences that could result from wrongful or belated implementation of this contractual obligation.

Archiving

16.2 For a period of five years from the End Date and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim or investigation by the European Anti-Fraud Office (OLAF), if notified to the Organisation, has been disposed of, the Organisation shall keep and make available according to **Article 17** all relevant financial information (originals or copies) related to the Agreement and to any Procurement Contracts, Grant agreements and financial support to third parties concluded under this Agreement.

Supporting documents are not required in order to close the Action and make the final payment. Supporting documents must, however, be retained for 5 years after the “End Date” of the Action (see definition in *Article 1*) and may need to be presented in the course of a verification of the Action.

The five-year period may be extended, should the Organisation become aware of the initiation of any claims. In such a case, the custody of documents containing financial information and identified as potentially relevant to the claim should be extended until such time as the claim has been dropped, settled or dismissed.

Article 17 - Access and financial checks

17.1 The Organisation shall allow the European Commission and the European Court of Auditors, or any authorised representatives to conduct desk reviews and on-the-spot checks on the use made of the EU contribution on the basis of supporting accounting documents and any other document related to the financing of the Action.

17.2 The Organisation agrees that OLAF may carry out investigations, including on-the-spot checks, in accordance with the provisions laid down by EU law for the protection of the financial interests of the EU against fraud, corruption and any other illegal activity.

Authorised EC representatives should include for example external auditors commissioned by the European Commission to audit or verify the Action.

For the purpose of this Article, verification missions are conducted when the Organisation is an international organisation. In case the Organisation is not an international organisation, an audit will take place.

With respect to the present Article, it is understood that the investigations will be carried out pursuant to any Administrative Cooperation Arrangement (ACA) signed between OLAF and the international Organisation (when applicable). OLAF will retain the right to carry out investigations in view of protecting EU interests also in absence of an Administrative Cooperation Arrangement.

The Administrative Cooperation Arrangement will set out, inter alia, the details and modalities for the implementation of Articles 17.2, 17.3 and 17.4 of the General Conditions for what concerns specifically OLAF.

For the purpose of this Article, the scope of the investigations, including on-the-spot checks, should be limited to the protection of the financial interests of the EU in relation to the Action. The references to EU law relate only to the procedures applicable to OLAF in order to carry out investigations, including on-the-spot checks.

1. General rules:

For the cooperation between OLAF and the Organisation under this article, the following general rules apply:

Privileges and immunities

In its investigations, OLAF will respect any privileges and immunities to which the organisation may be entitled to.

Confidentiality

Information communicated to OLAF is protected by professional secrecy in accordance with Article 10 of Regulation (EU, Euratom) 883/2013.

Personal data protection

OLAF will handle and process any personal data received from the Organisation in accordance with Regulation (EC) 45/2001.

Contact person

The Organisation should designate a contact person for the exchange of information and any other communication related to the investigative cooperation with OLAF.

2. Administrative cooperation arrangement with OLAF

Some Organisations have established an Administrative Cooperation Arrangement (ACA) with OLAF.

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The negotiation and conclusion of an Administrative Cooperation Arrangement (ACA) with OLAF is not mandatory for the implementation of this Article.

3. Practical guidelines for the investigative cooperation between OLAF and the organisation

Exchange of information

In accordance with *Article 17*, OLAF may submit a written request to the Organisation to ask necessary information or documents concerning the technical and financial management of operations. When requesting such information or documents, OLAF will state the purpose of the request, what information or documents are requested and the time in which it would like the information to be provided.

The requested documents or information may be provided by any means, including in paper or electronic form, attached to a note, e-mail or during meetings, and may be copied, kept, stored and used for the purpose of OLAF investigations in connection with operations financed under the relevant Agreement.

When appropriate, OLAF and the Organisation may agree to set up *ad hoc* joint or parallel investigations in order to conduct checks and inspections or other investigative activities.

- 17.3 The Organisation agrees that the execution of this Agreement may be subject to scrutiny by the Court of Auditors when the Court of Auditors audits the European Commission's implementation of EU expenditure. In such case the Organisation shall provide to the Court of Auditors access to the information that is required for the Court to perform its duties.

The procedure for verification, audit and investigations responds to the need for the European Commission to rest reassured about the financial management of the Action by the Organisation.

In case the European Commission, OLAF, the European Court of Auditors, or any other authorised representatives requests information or documents which the Organisation considers confidential, the Organisation should provide such information. The way of sharing the information will be affected by the Organisation's policy on information disclosure.



- 17.4 To that end, the Organisation undertakes to provide officials of the European Commission, OLAF and the European Court of Auditors and their authorised agents, upon request, information and access to any documents and computerised data concerning the technical and financial management of operations financed under the Agreement, as well as grant them access to sites and premises at which such operations are carried out. The Organisation shall take all necessary measures to facilitate these checks in accordance with its Regulations and Rules. The documents and computerised data may include information which the Organisation considers confidential in accordance with its own established Regulations and Rules or as governed by contractual agreement. Such information once provided to the European Commission, OLAF, the European Court of Auditors, or any other authorised representatives, shall be treated in accordance with EU confidentiality rules and legislation and **Article 6**. Documents must be accessible and filed in a manner permitting checks, the Organisation being bound to inform the European Commission, OLAF or the European Court of Auditors of the exact location at which they are kept. Where appropriate, the Parties may agree to send copies of such documents for a desk review.

A verification is not an audit, but an agreed upon procedures engagement. Verifications of IOs are always risk-based. It is of utmost importance to understand the differences between the two and not to confuse one with the other.

Verifications should be carried out in accordance with the Framework Administrative Arrangements/Agreements between the European Commission and the International Organisation. There are Framework agreements with several International Organisations (for example, the United Nations, the World Bank Organisation for Economic Co-operation and Development, and the Council of Europe). In some cases, there may be further documents agreed between EC and the International Organisation (such as Common Terms of Reference for Verification Missions).

For International Organisations which do not have such Framework Administrative Arrangement / Agreement and for all other types of Organisations, the European Commission will apply its Rules and Procedures for auditing and/or verification purposes.

Previous monitoring, evaluation, European Court of Auditors or OLAF missions relating to the Action may not be invoked by the Organisation to refuse an audit or a verification mission on that same Action.

The decision to conduct a verification mission can be taken by the Contracting Authority . While considering whether to do so, the Contracting Authority should take into account the following:

- a) timing - ideally the verification mission should take place during the lifetime of the project;
- b) have there already been other verification missions (by DEVCO or other European Commission's service) conducted on the same project or office or International Organisation? If so what were the findings? (repetitions/multiplications should be avoided);
- c) is there any audit information on the project (co)funded by the EU? If so, the Contracting Authority may request such information be provided, where possible and available, and, based on the information provided, decide whether the verification mission is still necessary.

Conduct of a verification mission

The decision to conduct a verification mission should be announced to the International Organisation in due time.

The EU Authorising Officer should ensure that the verification team is properly briefed by the European Commission on the verification process, its scope, nature, conduct and outcome. There may be differences in verification procedures depending on the International Organisation.

The verification mission *draft report* must be transmitted to the International Organisation as soon as it is available. The International Organisation will review the report and provide its comments which shall be reflected in the report. As a result, certain findings may be cancelled or adjusted. A copy of the final verification report will be transmitted to the International Organisation as per the agreed communication lines. All this shall be done in a timely manner.

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The verification missions' reports are not public. Requests to access such reports will be analysed on a case-by-case basis in consultation with the International Organisation concerned before any communication of the report. These documents are subject to the Regulation (EC) No 1049/2001 regarding public access to EU documents, and in particular its Article 4.

The final verification mission report & follow up on the findings

A verification mission final report is a management tool at the disposal of the Contracting Authority. It is not an audit report and therefore should not be considered as presenting an audit opinion.

The responsibility to follow up on factual findings lies with the operational and/or the financial officers who requested the verification.

If there are financial findings, a contradictory process between the Contracting Authority and the International Organisation should be started in order for the International Organisation subject to verification and the Contracting Authority to discuss the findings indicated in the final report. For instance, for amounts considered ineligible by the verifiers for EU funding and contested by the International Organisation, the Contracting Authority should examine whether the amount concerned is indeed ineligible (the eligibility criteria are set out in each contract/agreement concluded between the Contracting Authority and the International Organisation).

In case the parties cannot agree on certain findings in the final verification report, the case should be reported to the next hierarchical level.

Ineligible costs found may lead to a recovery of the concerned amount by the EU. In such a case, the terms of the specific contract/agreement must be reviewed to determine the amount to be recovered taking into account e.g. whether the action is fully-funded by the EU, whether the EU contribution is reflected as a percentage of eligible costs, etc.

In practical terms, only after receipt and examination of the comments of an International Organisation concerning the findings might there be a pre-information notice and a subsequent debit note.

Other findings shall be addressed within the framework of the project (if it is still on-going) or in the context of the broader cooperation with the International Organisation (for future projects). In practical terms, the operational or financial officer shall convene a meeting with the International Organisation during which the correctness (vis-à-vis provisions of a specific agreement and applicable framework agreements) of the findings should be reviewed. Where possible, a mutually acceptable way forward shall be agreed.

17.5 Where applicable, the desk reviews, investigations and on-the-spot checks referred to in **Article 17.1** to **17.4** shall refer to a verification which shall be performed in accordance with the verification clauses agreed between the Organisation and the Commission. This is without prejudice to any cooperation agreement between OLAF and the Organisation's anti-fraud bodies.

17.6 The European Commission shall inform the Organisation of the planned on-the-spot missions by agents appointed by the European Commission in due time in order to ensure adequate procedural matters are agreed upon in advance.

17.7 Failure to comply with the obligations set forth in **Article 17** constitutes a case of breach of a substantial obligation under this Agreement.

This Article applies where the Organisation has agreed verification clauses (examples are: the UN Organisations, IOM, COE, OECD, IMF, among others). Additionally, this Article makes applicable any Administrative Cooperation Agreement between the Organisation and OLAF.

Article 18 - Eligibility of costs

18.1 The eligible direct costs of the Action are costs that meet all the following criteria:

- a) they are necessary for carrying out the Action, directly attributable to it, arising as a direct consequence of its implementation and charged in proportion to the actual use;
- b) they are incurred in accordance with the provisions of this Agreement.
- c) they are actually incurred by the Organisation, i.e. they represent real expenditure definitely and genuinely borne by the Organisation, without prejudice to **Article 18.5**;
- d) they are reasonable, justified, comply with the principle of Sound Financial Management and are in line with the usual practices of the Organisation regardless of their source of funding;
- e) they are incurred during the Implementation Period with the exception of costs related to final report, final evaluation, audit and other costs linked to the closure of the Action which may be incurred after the Implementation Period;
- f) they are identifiable and backed by supporting documents, in particular determined and recorded in accordance with the accounting practices of the Organisation;
- g) they are covered by one of the sub-headings indicated in the estimated budget in Annex III and by the activities described in Annex I;
- h) they comply with the applicable tax and social legislation taking into account the Organisation's privileges and immunities.

Incurred costs are costs which represent real expenditure definitely and genuinely borne by the Organisation with reference to a specific time period.

Costs are incurred when services are rendered, supplies are delivered and works are carried out for the purpose of the project.

In order to be eligible, costs have to:

Subparagraph a):

Be necessary for the implementation of the Action, i.e. they would not be incurred if the Action did not take place. It is important to explain which specific resources and related costs are needed for the implementation of the Action (this can be done in the description of the Action in Annex I).

Subparagraph b):

Respect the provisions of this agreement, such as Articles 22 and 24 on contracting.

Subparagraph c):

Be actually incurred, i.e. the costs are real and generated an obligation to be paid by the Organisation. Costs are incurred when services are rendered, supplies are delivered and works are carried out for the purpose of the project.

Subparagraph e)

Be incurred during the Implementation Period, which does not necessarily mean that the costs have to be paid during the Implementation period.

The costs relating to services or equipment supplied in order to carry out the Action may be invoiced and paid after the Action has been completed, provided that the service/goods were in fact supplied during the Implementation Period.

Regarding cost of audits, please see below. >>

Subparagraph f):

All the costs incurred – corresponding to the entire budget of the Action and not only to the EU contribution – must be recorded in the accounts of the Organisation or Co-delegates, Co-beneficiaries, Affiliated Entities, Contractors or Grant Beneficiaries as the case may be. The supporting documents (tenders, orders, vouchers, invoices, receipts etc.) must exist, be available for inspection and accurately reflect the recorded costs. See also Article 16 for more details.

It is strongly advisable for the Organisation to keep (electronic) copies of all relevant documents and accounts and to carry out ex-ante and -where applicable based on its risk assessment processes - ongoing intermittent checks to ensure that supporting and accounting documents are available, correct, and duly filed and recorded.

Costs expressed as unit costs, flat rate or lump sum are not eligible direct costs because they are not clearly identifiable nor backed up by supporting documents proving that they represent real expenditure definitely and actually incurred (not complying with letter c) and f) of the article). The same reflection applies to up-lifts on salary costs, universal price lists and post occupancy charges (among others).

This type of costs is eligible only if so agreed in the Description of the Action in the form of Simplified cost option (below 60.000 EUR), or if authorised by *COMMISSION DECISION C(2016) 3631 of 16.6.2016* (for unit costs for staff) or if authorised by the *COMMISSION DECISION C(2016) 3634, of 16.6.2016*; (for project-office costs). Otherwise they shall be covered by the remuneration.

Subparagraph g):

Only those items that fall within a budget line that has been approved in the budget and the description of the Action are eligible. It is possible to modify budget lines, but the contract may have to be amended according to *Article 11*.

Please note that costs included in the budget are provisional and that only costs actually incurred can be reported.

In all doubtful cases, it is advisable to discuss and, if possible, agree in writing with the Contracting Authority beforehand.

Subparagraph h):

The Organisation, and as the case may be Co-Beneficiaries and Affiliated Entities, are fully responsible for the coordination and execution of all activities and have to ensure compliance with local, national and other applicable legislation.

They must respect their applicable rules, procedures and policies.

The Organisation is responsible for verifying and consolidating the information that will be provided to the Contracting Authority; therefore it should also make sure that the conditions for the eligibility of costs are met, through appropriate supervision of the other Co-Beneficiaries Affiliated Entities and Grant Beneficiaries and appropriate internal arrangements. For ease of clarification, the same does not apply to the Organisation vis-à-vis its Co-Delegates.

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It is strongly advisable for the Organisation to keep (electronic) copies of all relevant documents and accounts and to carry out ex-ante and -where applicable based on its risk assessment processes - ongoing intermittent checks to ensure that supporting and accounting documents are available, correct, and duly filed and recorded.

The Organisation bears the ultimate financial responsibility for the entire Action and must reimburse to the Contracting Authority any cost declared ineligible (unless in case of Co-Delegation the reimbursement relates exclusively to a Co-Delegatee who has also been pillar-assessed).

For Delegation Agreement – Co-delegation:

Costs incurred by the Organisation pursuant its tasks as Coordinator (i.e. related to the coordination of the payments and reporting of the Action) are considered to be directly eligible, provided that all the criteria of *Article 18.1* are met.

This Article covers the criteria of eligibility for the whole EU financing. This is without prejudice to the specific eligibility assessment conducted under PA Grant Agreement, which is carried out on all costs and without the possibility to apply the principle of notional approach.

For PA Grant Agreements:

Costs incurred by Affiliated Entities which are identified in the Special Conditions will also be accepted as eligible. In this case, the Affiliated Entities concerned have to abide by the same rules applicable to the Beneficiaries Organisation under the PA Grant Agreement with regard to the eligibility of costs and the rights of checks and audit/ verification by the Commission, OLAF and the Court of Auditors.

The Organisation is responsible for monitoring the correct implementation of the Action and for verifying and consolidating the information that will be provided to the Contracting Authority; therefore the Organisation should also make sure that the conditions for the eligibility of costs are met, through appropriate supervision of the Co-Beneficiaries and the Affiliated Entities, and appropriate internal arrangements.

Costs of Audits:

In case the Action should be specifically audited, as per request by the Commission or as when its need is agreed by the Parties and mentioned in Annex I («Description of the Action»), the audit costs can be considered as direct eligible costs, provided that eligibility criteria set out under *Article 18.1* are met.

In all the other cases, when Audits are carried out on the initiative of the Organisation but not agreed with the Commission (for example systemic/annual/ad-hoc audit on an Action), such audits should be considered as part of the remuneration/indirect costs, under *Article 18.3*.

In the specific case of Delegation Agreements, the Audit Opinion complementing the Management Declaration (either annually or project by project) is deemed to be systemic and always covered by the remuneration.

18.2 The following costs may not be considered eligible direct costs but may be charged as part of the remuneration/indirect costs: all eligible costs that, while necessary and arising as a consequence of implementation, are supporting the implementation of the Action and not considered part of the activities that the Union finances as described in Annex I, including corporate management costs or other costs linked to the normal functioning of the Organisation, such as horizontal and support staff, office or equipment costs (except when duly justified and described in Annex I, such as a project office).

The present Article sets the general criterion to define whether a cost should be qualified as a direct or indirect cost.

Under PAGO DA 2, the distinction no longer lies on the localisation of the costs, but on their nature. As a general principle, in case the Organisation would have borne the concerned costs, had the Action financed by the EU not taken place, such costs should be considered as indirect costs.

These are costs typically associated with the normal functioning of the Organisation and the performance of its institutional and representation tasks.

Some examples of horizontal and support staff are staff from Human Resources, Legal Affairs, IT and Equipment staff.

The concept of Corporate Management Costs covers managerial functions which, while giving a contribution to the Action, only marginally deal with its implementation.

A specific assessment of the costs should be made on a case-by-case basis and described in detail in Annex I.

Project Offices are to be regarded as a specific autonomous cost regime, which is described in detail in the *COMMISSION DECISION C(3634) of 16.6.2016* on project office costs.

Specific Guidance on Project Offices:

It is stressed that reimbursement of office costs is eligible only when the following criteria are satisfied:

- a) the implementation of the action requires deployment of staff to manage operations in the field or set up an office at another location. At the phase of contracting the Operational units (with the support of the Finance and Contract unit) shall carry out an assessment of the need of using/setting up a project office and shall include in the Description of the Action mention to the Project Office.
- b) the costs of the project office charged to the Action are additional to the normal functioning of the Organization.
- c) the costs comply with the costs eligibility criteria referred to in Article 18.1
- d) the costs fall within one of the categories specified at art 7.1 of the SC. Not all the categories indicated have necessarily to be considered eligible; it could be that for a specific Action only some of these categories are relevant (a derogation is not needed).

18.3 The remuneration/indirect costs shall be declared on the basis of a flat-rate which shall not exceed 7% of the total eligible direct costs to be reimbursed by the Contracting Authority. The remuneration/indirect costs do not need to be supported by accounting documents. For Multi-donor and comparable Actions, the remuneration/indirect costs shall not be higher than that charged by the Organisation to comparable contributions.

The flat-rate figure not exceeding 7% is calculated as a percentage of the final amount of the direct eligible costs actually incurred. The exact amount due to an Organisation will only be known after the direct eligible costs have been established by the Contracting Authority on the basis of the final report.

18.4 The following costs are ineligible for Union financing:

- a) bonuses, provisions, reserves or non-remuneration related costs. Employers' contributions to pension or other insurance funds run by the Organisation may only be eligible to the extent they do not exceed the actual payments made by these schemes and that the amount provisioned does not exceed the contribution that could have been made to an external fund;
- b) full-purchase cost of equipment and assets unless, for EU External Actions and CFSP, the asset or equipment is specifically purchased for the Action and ownership is transferred in accordance with **Article 9**;
- c) duties, taxes and charges, including VAT, that are recoverable/deductible by the Organisation;
- d) return of capital;
- e) debts and debt service charges;
- f) provision for losses, debts or potential future liabilities;
- g) banking charges for the transfers from the Contracting Authority;
- h) costs incurred during the suspension of the implementation of the Agreement except the minimum costs agreed on in accordance with **Article 12.8**;
- i) costs declared by the Organisation under another agreement financed by the European Union budget (including through the European Development Fund);
- j) contributions in kind. The cost of staff assigned to the Action and actually incurred by the Organisation is not a contribution in kind and may be declared as direct eligible cost if it complies with the conditions set out in **Article 18.1**;
- k) costs of purchase of land or buildings, unless otherwise provided in the Special Conditions;
- l) for PA Grants: Salary costs of the personnel of national administrations, except if stated in the Special Conditions and if they relate to activities which the relevant public authority would not carry out if the Action were not undertaken.

This article identifies the costs that, even if satisfying the above mentioned criteria, cannot be considered eligible.

Letter a):

Please consider *COMMISSION DECISION C(2016)3631 of 16.6.2016*, which amends the *COMMISSION DECISION C(2015)350 of 30.1.2015*.

The costs incurred by the Organisation as reflected in the staff pay slip is a direct eligible cost. In addition, contributions from the Organisation to its pension/insurance funds are also eligible as far as they do not exceed the limits set in *Article 18.4.a*)

Letter l):

Salary costs of personnel of national administrations may only be considered as eligible costs to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the Action would not be undertaken. However, EU funding of salary costs corresponding to activities which the public administration had already undertaken before the launching of the Action, is not possible. Indeed, it would generate a profit for the Organisation since these costs are already funded by the budget of the Member State (or the regional or local



> Simplified cost options

18.5 Direct eligible costs may also be declared by using any or a combination of unit costs, lump sums and flat-rate financing. The methods used by the Organisation to determine unit costs, lump sums or flat-rates shall comply with the principles provided in *Articles 18.1, 18.2 and 18.4*, be clearly described and substantiated in Annex III, shall avoid double funding of costs and shall ensure reasonably that no profit is generated. These methods shall be based on the Organisation's historical or actual accounting data, its usual accounting practices or on external information where available and appropriate.

Simplified cost options may take the form of:

- a) **unit costs:** these cover all or certain specific categories of eligible costs which can be clearly identified (must be indicated in the Budget at proposal stage) and are expressed in amounts per unit. *Example: unit cost per working month for personnel costs based on internal policies and average (payroll) costs; unit costs for small local transportation or other expenses in rural areas (often in expense categories with many small value items and/or with poor documentation), per diems etc;*

Per diems are not considered as a simplified cost option for the purposes of Union financing when a Beneficiary the Organisation reimburses a fixed amount to its staff in accordance with its staff rules and requests for the reimbursement of that amount in the Action Budget. Such per diems are considered actual costs.

- b) **lump sums:** these cover in global terms all or certain specific categories of eligible costs which can be clearly identified (must be indicated in the Budget at proposal stage). *Example: global cost for the Organisation of an opening event, global cost for the production of information videos etc;*
- c) **flat-rate financing:** this covers specific categories of eligible costs which can be clearly identified (must be indicated in the Budget at proposal stage) and are expressed as a percentage of other eligible costs. *Example: local office costs and related expenses (maintenance, security, a shared car etc.) charged as a percentage of staff costs, indirect costs, etc.*

Simplified cost options can apply to one or more of the direct cost headings of the budget, or to sub-cost headings or to specific cost items within these cost headings.

If the Organisation wishes to include simplified cost options, it must introduce them at proposal stage. The Contracting Authority will decide whether such costs can be accepted during the contracting phase on the basis of the Budget submitted.

Particular attention should be paid to explaining how costs are calculated and budgeted.

More specifically, a clear explanation shall be given for those costs that are relevant or not easily justifiable because, for instance, they are especially expensive (compared to other similar items) and/or relating to quantity purchases.

The explanation should be provided at proposal stage in the budget, and/or as appropriate in the reports to understand their relationship with the results/activities of the Action.

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18.6 Costs declared under simplified cost options do not need to be backed by accounting or supporting documents except if they are necessary to demonstrate that the costs have been declared according to the agreed method or cost accounting practices and that the qualitative and quantitative conditions defined in Annex I and III have been respected.

18.7. For staff costs, the unit cost (the hourly, daily or half-daily rate) is calculated using the number of annual productive units (respectively productive hours, days or half-days).

- a) For the number of annual productive units, the Organisation may choose one of the following:
 - i) 1720 hours or 215 days or 430 half-days for persons working full time (or corresponding pro-rata for persons not working full time);
 - ii) the total number of hours or days or half-days worked by the person in the year for the Organisation, defined as the annual workable hours or days or half-days of the person (according to the employment contract, applicable labour agreement or national law) plus overtime worked minus absences (such as sick leave and special leave);
 - iii) the standard number of annual hours or days or half-days generally applied by the Organisation for its staff in accordance with its usual cost accounting practices. This number must be at least 90% of the standard annual workable hours or days or half-days.

For the purposes of points (ii) and (iii), the annual workable hours or days or half-days mean the period during which the staff must be working, at the Organisation's disposal and carrying out his/her activity or duties under the employment contract, applicable collective labour agreement or national working time legislation;

- b) The number of actual units (hours or days or half-days) declared by the Organisation shall be necessary for the implementation of the Action and shall be identifiable and verifiable.

This is especially important in the case of simplified cost options under Article 18.5 - 18.10 where for each corresponding budget item or heading, the text must:

- a) describe the information and methods used to establish the amounts of unit costs, lump sums and/or flat-rates;
- b) explain the formulas for the calculation of the final eligible amount;
- c) identify the Beneficiaries Organisation or Co-Beneficiary who will use the simplified cost option (in case of Affiliated Entities, the relevant Organisation/Co-Beneficiary should be specified first), in order to verify the maximum amount per each Beneficiary, i.e. Organisation or Co-Beneficiary, which includes if applicable simplified cost options of its Affiliated Entity(ies).

Once simplified cost amounts (as specified in the Action Budget) have been assessed and approved by the Contracting Authority (in accordance with the approved methodology, following the correspondent Terms of Reference and relevant rules in the Commission Decisions) such costs will no longer be subject to a detailed ex post verification of actual underlying cost data. Hence, Auditors will not be required to check supporting documents to verify the actual costs incurred but they must focus on a correct application of the formulas for the calculation of the cost based on related inputs and relevant quantitative and qualitative information. Nevertheless, the Organisation must keep all underlying data and records relating to actual costs for inspection by the Court of Auditors and/or the European Commission or antifraud service as set out in *Article 16* and *17*.

If staff costs are reimbursed on the basis of unit costs the «amounts of the unit costs» to be declared by the Organisation have to be calculated in accordance with the method set out in *Article 18.7.a*). The staff costs to be declared have to correspond to the amount obtained by multiplying the «unit costs» (rates per hour, day or half a day) by the number of «actual units» (number of actual hours, days or half-days worked by staff on the Action).

If the contract (or applicable collective labour agreement or national working time legislation) does not make it possible to determine the annual workable units, option c) (ii) cannot be used.

If there is no applicable reference for the standard annual workable units, option c) (ii) cannot be used. The standard annual workable hours or days are the time to be spent by the employees according to the contract or rules (e.g. 40 hours a week or 5 days a week).

The threshold of 90% is needed since the Organisation may include or exclude certain activities (e.g. general training, general meetings etc.) when calculating the 'standard annual productive hours', if this is in line with its usual cost accounting practices. The number of hours is calculated on the basis of the 'standard annual productive hours' generally applied by the Organisation for its personnel, in accordance with its usual cost accounting practices. As a simple example: it is not acceptable to calculate the unit cost using 4 days per week as 'standard annual productive days', when the 'standard annual workable days' per week are 5, since it would result in an excessively high unit cost.

Example (calculation of standard annual workable hours):

Full-time researchers hired by Research Centre Z have an employment contract that states that they must work eight hours per day, from Monday to Friday. National legislation provides for 22 working days of annual leave, plus eight days of public holidays. The applicable collective labour agreement adds three extra days of annual leave.

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*The standard annual workable hours for Research Centre Z would therefore be:
 365 days — 104 days (Saturdays and Sundays) — 22 days (annual leave) — 8 days (public holidays)
 - 3 days (collective agreement) = 228 days * 8 hours per day = 1 824 hours*

Standard annual productive hours for Research Centre Z:

Research Centre Z would like to use its usual cost accounting practices to calculate the hourly rates for EU Actions. It calculates the number of standard annual productive hours as follows:

Annual working days = 228

- average annual sick leave (days) = 3

- days of general training = 4

- other unproductive activities (days) = 9

- productive days = 212

Multiplied by 8 working hours per day

- standard annual productive hours = 1 696

This number of standard annual productive hours must then be compared with 90% of standard annual workable hours (in this example 1 824).

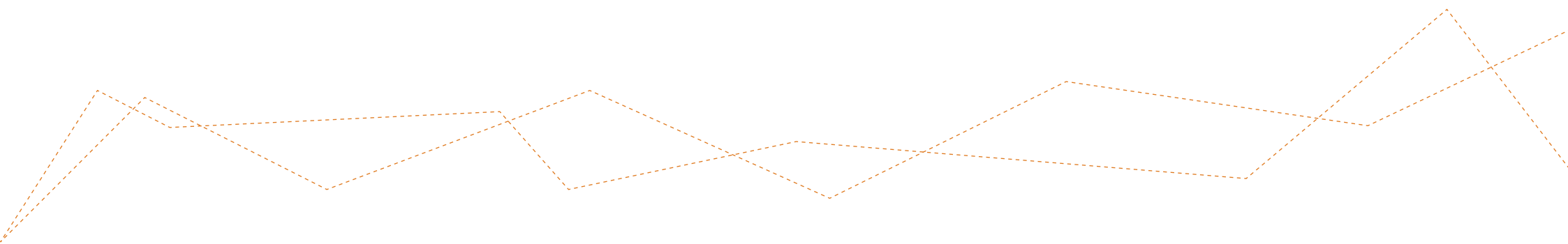
90% of 1 824 = 1 642

1 696 hours (usual cost accounting practice) > 1 642 hours (90% annual workable hours)

Research Centre Z may apply its number of standard annual productive hours (i.e. 1 696) to EU Actions since the number is higher than 90% of annual workable hours.

If its number of standard annual hours is lower than 1 642 (e.g. 20 days of other unproductive tasks instead of 9 - 1 608 annual productive hours), Research Centre Z must apply 1 642 hours (90% of the annual workable hours).

If its number of standard annual productive hours is higher than 90% (in our example it is 93%: 1 696/1 824), Research Centre Z must use this number (and not 90% of annual workable hours).



18.8 The total amount declared on the basis of simplified cost options may not exceed EUR 60.000, unless otherwise provided for in the Special Conditions. The ceiling of EUR 60.000 does not apply to staff costs determined on the basis of the usual accounting practices of the Organisation as referred to in **Article 18.7**, nor to the costs of project offices where declared using a simplified allocation method as set out in the Special Conditions.

As a general rule, the total amount of financing on the basis of simplified cost options that can be authorised by the Contracting Authority cannot exceed EUR 60 000 per each beneficiary (i.e. per Organisation or Co-Beneficiary) (including simplified cost options proposed by its own Affiliated Entities). More particularly:

- a) the threshold of EUR 60 000 does not necessarily apply to the entire Grant amount. The Contracting Authority may also authorise simplified forms of Grants for only one or several categories of eligible costs up to EUR 60 000;
- b) the threshold of EUR 60 000 corresponds to the amount awarded in the form of reimbursement of unit costs, lump sums or flat-rate financing;
- c) in case of multi-beneficiary Grants, the threshold of EUR 60 000 refers to the amount awarded per Beneficiary. In the case of multi-beneficiary Grants, the Contracting Authority can award Grants or part of Grants in simplified forms exceeding EUR 60 000, provided that the amount per Beneficiary is equal to or less than EUR 60 000;
- d) the Financial Regulation provides for flat-rate financing of indirect costs on the basis of a rate up to 7% of the total eligible direct costs;
- e) the threshold of EUR 60 000 does not apply to the eligible indirect costs on the basis of a 7% or lower flat-rate applied to total eligible direct costs. Same applies for the unit costs for staff under **Article 18.7** which are authorised by *COMMISSION DECISION C(2016) 3631 of 16.6.2016* and for the project-offices and the reimbursement of project-office costs based on a simplified allocation methods, authorized by the *COMMISSION DECISION C(2016) 3634, of 16.6.2016*;

The threshold of EUR 60 000 should not be interpreted as a final ceiling for lump sums, unit costs or flat-rate financing. Higher amounts can be accepted but must be authorized by a Commission decision.

18.9 If a verification reveals that the methods used by the Organisation to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Agreement, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat-rate financing.

If a verification/audit reveals that the calculation methods used by the Organisation, Co-Beneficiary(ies) or its Affiliated entity(ies) to determine unit costs, lump sums or flat-rates are not in line with relevant conditions or factual information (e.g. the generating events have not occurred), the Contracting Authority may establish such costs as not eligible and recover up to the amount of the simplified cost options used.

18.10 Upon request of the Organisation, the European Commission may validate ex-ante the compliance of the methods used for determining the unit costs, lump sums or flat-rates or of the usual costs accounting practices. In such case, costs declared in compliance with those methods and accounting practices will not be challenged by ex post controls if the beneficiary did not conceal any information for the purpose of their approval.

In order to be validated by the European Commission, the methodology should be in accordance with its correspondent Terms of Reference and relevant rules in the Commission Decisions.

Article 19 - Payments

19.1 Payment procedures shall be as follows:

- a) the Contracting Authority shall provide a first pre-financing instalment as set out in **Article 4.1** of the Special Conditions within 30 days of receiving this Agreement signed by both Parties;
- b) the Organisation may submit a request for further pre-financing instalment for the following reporting period in accordance with **Article 4** of the Special Conditions; the following provisions apply:
 - i) the reporting period is intended as a twelve-month period unless otherwise provided for in the Special Conditions. When the remaining period to the end of the Action is up to 18 months, the reporting period shall cover it entirely;
 - ii) if at the end of the reporting period less than 70% of the immediate preceding payment (and 100% of previous payments, if any) has been subject to a legal commitment with a third party, the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the immediately pre-financing payment (and 100% of previous payments, if any) and the part of the previous pre-financing payments which has been subject to a legal commitment;
 - iii) the Organisation may submit a request for further pre-financing payment before the end of the reporting period, once more than 70 % of the immediately preceding payment (and 100% of previous payments, if any) has been paid by the Organisation to its staff or otherwise subject to a legal commitment with a third party. In this case, the following reporting period starts anew from the end date of the period covered by this payment request;

The agreed pre-financing rate is stated in **Article 4.1** of the Special Conditions.

The determination of the amount of the pre-financing instalments corresponds to this percentage of the part of the forecast budget for the following reporting period of the Action which is being financed by the Contracting Authority, excluding not authorised contingencies for External Action. The contingency reserve is not considered in the payments until, and unless, approved, as it will not be disbursed if not needed. This means that it should not be budgeted in the requests for pre-financing. Once approved it will be reflected in the relevant budget lines and therefore treated like the other budgeted/eligible costs.

An initial pre-financing payment will be made after the Agreement has been signed by both Parties. This payment will cover a percentage of the Contracting Authority's contribution to budgeted costs for the first year, as stated in **Article 4.1** of the Special Conditions.

Example: The Contracting Authority is contributing 50% of the total eligible costs of a project. The pre-financing rate stated in **Article 4.1** of the Special Conditions is 80%. The Budget for the first year is EUR 100 000, after deduction of the contingency reserve.

The initial pre-financing instalment may be EUR 40 000, which is 80% of EUR 50.000, i.e. of the part of the eligible costs which is financed by the Contracting Authority.

The further pre-financing instalments are intended to be split among the reporting periods. However, they can be presented as a single global amount in the Special Conditions and as the actual pre-financing instalments are based on the updated budget forecast for the following reporting period, presented by the Organisation.

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- c) at the end of the Implementation Period, the Organisation shall submit a payment request for the balance, where applicable, together with the final report. The amount of the balance shall be determined according to **Article 20** and following approval of the request for payment of the balance and of the final report;
- d) the Contracting Authority shall pay the further pre-financing instalments and the balance within 90 days of receiving a payment request accompanied by a progress or final report, unless the time limit for payment was suspended according to **Article 12** or **13**.

Nevertheless, with respect to Delegation Agreements, where there is high level of certainty in the amounts, the further pre-financing instalments can be broken down per payments and reflected already in the contract. This option is stated in footnote 18 of **Article 4.2** of Special Conditions Delegation Agreement.

For PA Grants, the Contracting Authority's percentage contribution to the forecast budget usually corresponds to its percentage contribution to the eligible costs as set out in **Article 3.2** of the Special Conditions. Note that for Actions where the "accepted cost system" is used, the Contracting Authority's percentage contribution to total "accepted costs" and total "eligible costs" will be different. The adjustment to ensure the co-financing will be done at the end of the Action, with the final payment, according to **Article 20** and **23**. Please see the explanation to the *standard supplementary provision 7.1.X on accepted costs system*.

Example: The maximum EU contribution under a particular call is 80% of accepted costs. The total 3-year project budget is EUR 300 000. Indirect taxes, which are accepted but not eligible costs, account for 5% of the total budget - EUR 15 000 – so total eligible costs are EUR 285 000. The EU is contributing EUR 240 000 to the project, which is 80% of total accepted costs but 84.21% of total eligible costs. If for instance, the total second year budget estimate is EUR 112 000, including EUR 4 480 (4%) indirect taxes, which are not an eligible cost. The EU will pay 84.21% of eligible costs i.e. $EUR\ 112\ 000 - EUR\ 4\ 480 = EUR\ 107\ 520 \times 84.21\% = EUR\ 90\ 543$.

EU External Actions

The Organisation has 60 days following the end of the reporting period to present an interim report (narrative and financial, covering the elapsed reporting period).

If at the end of the reporting period eligible costs of the Organisation related to its staff or otherwise subject to a legal commitment towards a third party are less than 70% of the last payment (and 100% of the preceding payments), the further pre-financing payment may not be paid in full, but may be partially paid. If the Organisation presents a payment request, the payment is reduced by the amount corresponding to the difference between the 70% of the last pre-financing payment (and 100% of the preceding payments) and the part of the eligible costs incurred which is financed by the Contracting Authority.

For the purposes of the application of the 70% rule, the applicable currency is the currency of the Agreement.

Alternatively, the Organisation may present a summary of the progress of the Action, and present a payment request earlier when the 70% threshold is reached (the narrative and financial report have then to cover the elapsed period since the last payment request). The following reporting period starts anew from the end date of the period covered by the payment request. In the case of Co-Delegation, please note that the Commission will make a single/aggregated payment of each instalment to the Organisation, who is in turn responsible for the distribution of the funds among the Co-Delegates. The 70% threshold is therefore to be read in an aggregated way, meaning, covering the legal commitments of all Co-Delegates.

Example: An Organisation has received an initial instalment of EUR 96 000 and submits a first interim report stating that EUR 60 000 of this-62.5 % - has been paid by the Organisation to its staff or otherwise subject to a legal commitment towards a third party.

The forecast budget for the following period for the second year of the project is EUR 87 000. However, the difference between the 70% threshold – $(\text{EUR } 96\,000 \times 70\%) = \text{EUR } 67\,200$ and the amount paid by the Organisation to its staff or otherwise subject to a legal commitment towards a third party - EUR 60 000 – is EUR 7 200. So the second instalment will be reduced by EUR 7 200 to EUR 79 800.

In case the Organisation submits a report (narrative and financial) without requesting any further payment (for example when initial pre-financing was very high while implementation was very slow and a significant under spending occurs), such a report is in principle treated as a summary of the progress of the Action. (A proper payment request according to *Article 19*, even for EUR 0, would have to be introduced in order to allow the Contracting Authority to approve the costs, but this is neither needed nor advisable as it would involve additional administrative workload on both sides).

As a general rule, when the remaining period to the end of the Action is less than 18 months, the forecast budget (and the pre-financing payment) will cover that remaining period; the next report will be the final report covering the whole Action.

The *balance* of the final amount of the Grant or, in case of a Delegation Agreement, the EU contribution will only be payable after the end of implementation period, when the final report together with a request for payment has been approved by the Contracting Authority.

If total final approved costs are less than originally foreseen and/or the reserve has not been used, the balance to be paid will be less than the amount stated in *Article 4* of the Special Conditions, as the Contracting Authority contribution is limited to the percentage of eligible or accepted costs, as stated in *Article 3* of the Special Conditions (see also *Article 20* and *23*).

For the purposes of P.A. Grant Agreements, take into account that following a call for proposals, the maximum EU contribution and percentage of eligible or accepted costs financed by the Contracting Authority may never be increased.

Concerning the final payment, it is understood that, at the end of the implementation period, the Organisation should always submit a payment request for the balance, even if such balance equals to zero. This would typically happen in cases of EU 100% pre-financing.

19.2 Payment requests shall be accompanied by narrative and financial reports presented in accordance with *Article 3*. The requests for pre-financing payments and the request for the balance shall be drafted in the Currency of the Agreement as specified in the Special Conditions. Except for the first pre-financing instalment, the payments shall be made upon approval of the payment request accompanied by a progress or final report. The final amount shall be established in line with *Article 20*. If the balance is negative, the payment of the balance takes the form of recovery.

19.3 Approval of the requests for payment and of the accompanying reports shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information contained therein.

- 19.4 The Contracting Authority shall make payments in the Currency of the Agreement as specified in the Special Conditions into the bank account referred to in the financial identification form in Annex IV.

Late payment interest

- 19.5 In case of late payment of the amounts stated in **Article 4** of the Special Conditions the following conditions apply:
- a) on expiry of the time limits for payments specified in **Article 19.1**, if the Organisation is not an EU Member State, it shall receive interest on late payment based on the rate applied by the European Central Bank for its main refinancing operations in Euros (Reference Rate), increased by three and a half percentage points. The Reference Rate shall be the rate in force on the first day of the month in which the time limit for payment expires, as published in the C series of the Official Journal of the EU;
 - b) the suspension of the time limit for payment by the Contracting Authority in accordance with **Article 12** or **13** shall not be considered as late payment;
 - c) interest on late payment shall cover the period running from the day following the due date for payment, up to and including the date of actual payment as established in **Article 19.1**. Any partial payment shall first cover the interest;
 - d) by way of exception to point (c), when the interest calculated in accordance with this provision is lower than or equal to EUR 200, the Contracting Authority shall pay such interest to the Organisation only upon request from the Organisation submitted within two months of it receiving late payment;
 - e) by way of exception to point (c), when the Contracting Authority is not the European Commission, and the European Commission does not make the payments, the Organisation shall be entitled to late payment interest upon its request submitted within two months of it receiving late payment;
 - f) for the purpose of **Article 23.2**, the interest shall not be treated as a receipt.

Both public law bodies and private law bodies with a public service mission are eligible for indirect management according to the FR; this is because of their close dependency from the State in terms of financing, management supervision or corporate governance.

Therefore, if the fulfilment of this dependency criterion allows for the favourable indirect management conditions, it also has to be considered with regard to the issue of late payment interest. Therefore, no late payment interest is due from the Commission to such bodies. This is the understanding to be given to **Article 19.5**.

Article 20 - Final amount of the EU contribution

20.1 The Contracting Authority shall determine the final amount of the EU contribution when approving the Organisation's final report. The Contracting Authority shall then determine the balance:

- a) to be paid to the Organisation in accordance with **Article 19** where the final amount of the EU contribution is higher than the total amount already paid to the Organisation; or
- b) to be recovered from the Organisation in accordance with **Article 15** where the final amount of the EU contribution is lower than the total amount already paid to the Organisation.

For the purpose of calculating the EU contribution, the final amount will be obtained by adding the costs reported in each progress report.

If payments are made in the accounting currency of the Organisation – which will be, for this case, the «Currency of the Agreement» – the final payment will in any case be limited to the maximum EU contribution in EURO as stipulated in the *Article 3.1* of the Special Conditions.

After the end of the implementation period, the Organisation should submit the final narrative and financial report in the currency of the Agreement. The final financial report shall present eligible costs in the currency of the Agreement.

Where the final eligible costs attributable to the European Union contribution is greater than the sum of all pre-financing instalments provided, the Organisation is entitled to request a final payment ("balance"). The amount of balance should be specified in the currency of the Agreement and shall represent the amount needed to balance the "income" (i.e. all pre-financing payments received from the EU) and eligible expenditure attributable to the EU (up to the amount of EU contribution denominated in the Art. 3.1 special conditions).

When the "balance" is negative (for instance: there is a surplus of amounts already paid over the EU final contribution, the Organisation will specify the amount of surplus balance in its accounting currency in its final report. In the pre-information letter the amount to be recovered will be indicated in the currency of the Organisation.

20.2 Without prejudice to **Article 23** the final amount shall be the lower of the following amounts:

- a) the maximum EU Contribution referred to in **Article 3.1** (for Delegation Agreements) and **Article 3.2** (for PA Grant Agreements) of the Special Conditions in terms of absolute value;
- b) the amount obtained after reduction of the EU contribution in accordance with **Article 20.3**;
- c) for PA Grant Agreements only, the amount obtained by applying the percentage laid down in **Article 3.2** of the Special Conditions to the eligible costs of the Action approved by the Contracting Authority.

20.3 Where the Action is not implemented, is not implemented in line with the Agreement, is implemented partially or late, the Contracting Authority may, after allowing the Organisation to submit its observations, reduce the EU contribution in proportion to the seriousness of the above mentioned situations. If there is a disagreement between the Organisation and the Contracting Authority on the reduction, the Organisation may refer the matter to the responsible director in the European Commission.



Part II:

Additional Provisions applicable only to Delegation Agreements

Text of the Article	Interpretation / Guidelines on application
<h2>Article 21 - Ex-post publication of information on Contractors and Grant Beneficiaries</h2> <p>21.1 The Organisation shall publish, on an annual basis, on its internet site, the following information on Procurement Contracts exceeding EUR 15.000 and all Grants financed by the EU: title of the contract/project, nature and purpose of the contract/project, name and locality of the Contractor or Grant Beneficiary and amount of the contract/project. The term "locality" shall mean the address for legal persons and the Region on NUTS³ 2 level, or equivalent, for natural persons. This information shall not be published for scholarships paid to natural persons and other direct support paid to natural persons in most need. This information shall be published with due observance of the requirements of confidentiality security and in particular the protection of personal data. The publication shall be waived, if such disclosure risks threatening rights and freedoms as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the Contractors or Grant Beneficiaries.</p> <p>3. Nomenclature of Territorial Units for Statistics, available at: http://ec.europa.eu/eurostat/ramon.</p> <p>21.2 The Organisation shall provide to the European Commission the address of the internet site where this information can be found and shall authorise the publication of such address on the European Commission's internet site.</p> <p>21.3 In the field of EU External Actions, where the Action is a Multi-donor Action and the EU contribution is not earmarked, the publication of information on Contractors and Grant Beneficiaries shall follow the rules of the Organisation.</p>	
<p>The obligation to publish all Grants (regardless of the amount) and procurement contracts exceeding 15.000 € stems directly from the Financial Regulation (Articles 60 (2) (e), 35 (2), Articles 21 and 137 (2) RAP).</p> <p>The right to publish according to Organisation's rules (including in the cases of EU Trust Funds) stems from Article 4.9 Common Implementing Regulation (CIR) and applies to Actions funded by the legal instruments covered by the CIR.</p> <p>This Article refers to the cases of joint co-financing.</p>	

Article 22 - Contracting and Early Detection and Exclusion System

Contracting

22.1 The Procurement Contracts and Grant contracts implementing the EU contribution shall be signed by the contracting deadline set out in **Article 2.4** of the Special Conditions. After the contracting deadline, only contracts following early termination of an existing contract, addenda to existing contracts and contracts concerning final audits and evaluation may be signed.

22.2 Unless otherwise provided for in the Special Conditions, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's relevant rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible.

22.3 The Organisation shall adopt reasonable measures, in accordance with its own Regulations and Rules, to ensure that potential candidates or tenderers and applicants shall be excluded from the participation in a procurement or grant award procedure and from the award of a Procurement Contract or Grant financed by EU funds, if the Organisation becomes aware that these entities:

- a) or persons having powers of representation, decision making or control over them, have been the subject of a final judgement or of a final administrative decision for fraud, corruption, involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings;
- b) or persons having powers of representation, decision making or control over them have been the subject of a final judgement or of a final administrative decision for an irregularity affecting the EU's financial interest;
- c) are guilty of misrepresentation in supplying the information required as a condition of participation in the procedure or if they fail to supply this information.

With respect to this Article, it is understood that the Organisation may apply its own rules of origin, provided that the such rules are not more restrictive than the applicable EC rules of origin (referred to in the corresponding Basic Act).

This provision allows the Organisation to apply its rules of participation and origin provided that the entities eligible under the Regulation financing the Action (i.e. EDF, DCI, ENI, IPA II, INSC, ICSF, PI, EIDHR and predecessors) can also participate. Therefore, this provision does not allow the application of narrower rules of participation and origin than those of the applicable Regulation or those that contain any type of domestic preference or national content.

It is clarified that the Organisation shall only ensure that the potential candidates or tenderers and applicants (the identity of which they are aware of at the time of the award decision) do not fall under any of the exclusion criteria listed under *Article 22.3 a) to c)* of the General Conditions.

> Early Detection and Exclusion System

22.4 The Organisation shall inform the European Commission if, in relation to the implementation of the Action, it has found that a third party is in one of the situations referred to in **Article 22.3 (a) and (b)** or if it has detected a fraud and/or an irregularity according to **Article 2.3**. The European Commission will introduce this information in the Early Detection and Exclusion System. The Organisation shall inform the European Commission when it becomes aware that transmitted information needs to be rectified updated or removed. The Organisation shall ensure that the entity concerned is informed that its data was transmitted to the European Commission and may be included in the Early Detection and Exclusion System and be published on the website of the European Commission. These requirements cease at the end of the Implementation Period.

22.5 Without prejudice to the power of the European Commission to exclude an entity from future procurement contracts and grants financed by the EU, the Organisation may impose financial penalties on Contractors and Grant Beneficiaries according to its own Regulations and Rules ensuring, where applicable, the right of defence of the Contractor or Grant Beneficiary.

22.6 The Organisation may take into account, as appropriate and on its own responsibility the information contained in the Early Detection and Exclusion System, when implementing EU funds. Access to the information can be provided through the authorised persons or via consultation with the European Commission as referred in **Article 5.6** of the Special Conditions⁴.

4. The Organisation shall be allowed to have direct access to the Early Detection and Exclusion System through an authorised person when the Organisation certifies to the Contracting Authority service responsible that it applies the adequate data protection measures as provided in the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The obligation of the Organisation to inform the European Commission ends at the end of the Implementation Period of the Agreement.





PART III:

Additional provisions applicable only to PA Grants

Text of the Article	Interpretation / Guidelines on application
<h3>Article 23 - No Profit</h3> <p>23.1 The EU contribution may not produce a profit in the framework of the Action, unless specified otherwise in Article 7 of the Special Conditions. Profit is defined as a surplus of the receipts over the eligible costs approved by the Contracting Authority when the request for payment of the balance is made.</p>	<p>The final amount of the EU contribution must also take into account the no-profit principle, i.e. the financial contribution is limited to the amount required to balance the receipts and the approved eligible costs of the Action.</p> <p>The application of the no-profit principle is made globally, at Action level (consolidated), and not for each Beneficiary/Affiliated Entity in the event of a multi-Beneficiary Grant Agreement.</p> <p>Please note that the “No Profit” principle is grounded on the financial outcome of the Organisation/entity concerned for the purpose of the Action only, regardless the nature as profit or no-profit of such entities.</p>



23.2 The receipts to be taken into account are the consolidated receipts on the date on which the payment request for the balance is made by the Organisation that fall within one of the two following categories:

- a) income generated by the Action, unless otherwise specified in the Special Conditions;
- b) financial contributions specifically assigned by the donors to the financing of the same eligible costs financed by the Agreement and declared by the Organisation as actual costs under the Agreement. Any financial contribution that may be used by the Organisation to cover costs other than those eligible under this Agreement or that are not due to the donor where unused at the end of the Action are not to be considered as a receipt to be taken into account for the purpose of verifying whether the EU contribution produces a profit in the framework of the Action.

At the time of the request for payment of the balance the Organisation must also declare all the receipts of the Action.

The receipts to be taken into account for the purpose of the no-profit rule are the revenue established (revenue collected and recorded in the accounts), or the revenue generated or confirmed (revenue not yet received but for which the generating event has already occurred or for which the Organisation has a commitment or a written confirmation) on the date on which the request for payment of the balance is made. Notably:

- a) **income generated by the Action, (unless the Special Conditions state otherwise, i.e. where the purpose of the Action is to generate an income). If revenue is generated by the Action, it is not deducted from the approved eligible costs, but it is considered on the side of receipts for the purposes of the application of the no-profit rule.**
- b) **the financial contributions of other donors which are specifically used to finance the same eligible costs of the Action (see below).**

Therefore, the following sources are not taken into account for the purposes of the no-profit rule:

- a) **the Organisation's, Co-Beneficiaries' or Affiliated Entities' own resources, without prejudice to any provision in the call for proposals (usually deriving from the Basic Act) requiring a minimum financial contribution from the Beneficiaries;**
- b) **the revenue generated by the Action after the date of the request for payment of the balance;**
- c) **financial contributions not specifically assigned by other donors to the financing of the same eligible costs declared as actual costs and financed by the Grant Agreement or which the donors allow for the reassignment to similar Actions or other activities in the case of surplus or non-consumption after the implementation of the initial Action;**
- d) **any interest generated by pre-financing paid to the Organisation as well as any interest paid to the Organisation as a result of late payment of amounts owed by the Contracting Authority;**
- e) **exchange rate gains;**
- f) **in-kind contributions.**

Organisation or Co-Beneficiaries' own contributions

In the absence of specific provisions imposing a minimum contribution from the Organisation's own funds, the Organisation retains an interest to look for other types of external financing and to promote any revenue from its operations throughout the implementation period.

Therefore, if the beneficiaries have provided in the forecast budget a certain amount of their own resources in order to balance costs and receipts, and ultimately the revenue generated by the Action or the contributions provided by other donors are more than expected, it is possible to replace the amount of their own resources which have been paid in full, or partially.

23.3 Where the final amount of the EU contribution determined in accordance with the Agreement would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final EU contribution to the eligible costs actually incurred approved by the Contracting Authority.

When the subsidised Action generates a surplus (profit), the Contracting Authority recovers the surplus pro rata of the EU contribution to the financing of the eligible costs actually incurred approved by the Contracting Authority (thus excluding other eligible costs declared on a Simplified Cost Option basis, including using the usual accounting practices of the Organisation).

The amount to be deducted from the Contracting Authority contribution is calculated by applying the actual rate of reimbursement of eligible costs actually incurred to the surplus, as determined at the time of payment of the balance. Therefore, the rate of recovery of profit may be less than the percentage of reimbursement of the eligible costs conventionally fixed. This is also the case when the provisional amount of the EU contribution, after applying the double ceiling, reaches the maximum contribution in absolute value established in the Special Conditions.

23.4 The provisions in **Articles 23.1 to 23.3** shall not apply to:

- a) Actions the objective of which is the reinforcement of the financial capacity of the Organisation if specified in **Article 7** of the Special Conditions;
- b) Actions which generate an income to ensure their continuity beyond the end of this Agreement, if specified in **Article 7** of the Special Conditions;
- c) EU contributions of EUR 60.000 or less.



Article 24 - Contracting

24.1 Where the implementation of the Action requires the procurement of goods, works or services, the Organisation shall award the Procurement Contracts to the tender offering best value for money or, as appropriate, to the tender offering the lowest price. In doing so, it shall avoid any conflict of interests. Where the procurement rules and procedures of the Organisation have been positively assessed by the European Commission, Procurement Contracts awarded in line with the assessed rules and procedures are deemed compliant with the aforementioned principles.

This Article does not impose any procedures on the Organisation. This means that the Organisation can use its own procedures to the extent that they ensure compliance with the principles laid down in the first sentence (whether those procedures have been positively assessed or not). This implies that the offers received were all evaluated against objective criteria enabling to measure the quality of the proposals and taking into account the price (with the lowest price receiving the highest score for the price criterion).

Non-compliance with the principles set forth in the first sentence makes the costs of the related contract ineligible. One example would be a difference between the tender with the lowest price or between the market price and the tender to which the contract was awarded not justified by valid criteria

In case of a conflict of interest, the costs of the related contract would also be ineligible.

There are essentially two scenarios of conflicts of interests leading to ineligibility in this context:

- a) conflict of interests had an impact on the beneficiary's conduct in the procurement procedure and the contract would have been awarded to a different tenderer in absence of conflict of interest, or
- b) conflict of interest entailed practices likely to distort competition between tenderers, i.e.:
 - i) entering into agreement with other economic operators or
 - ii) attempting to influence the decision-making process.

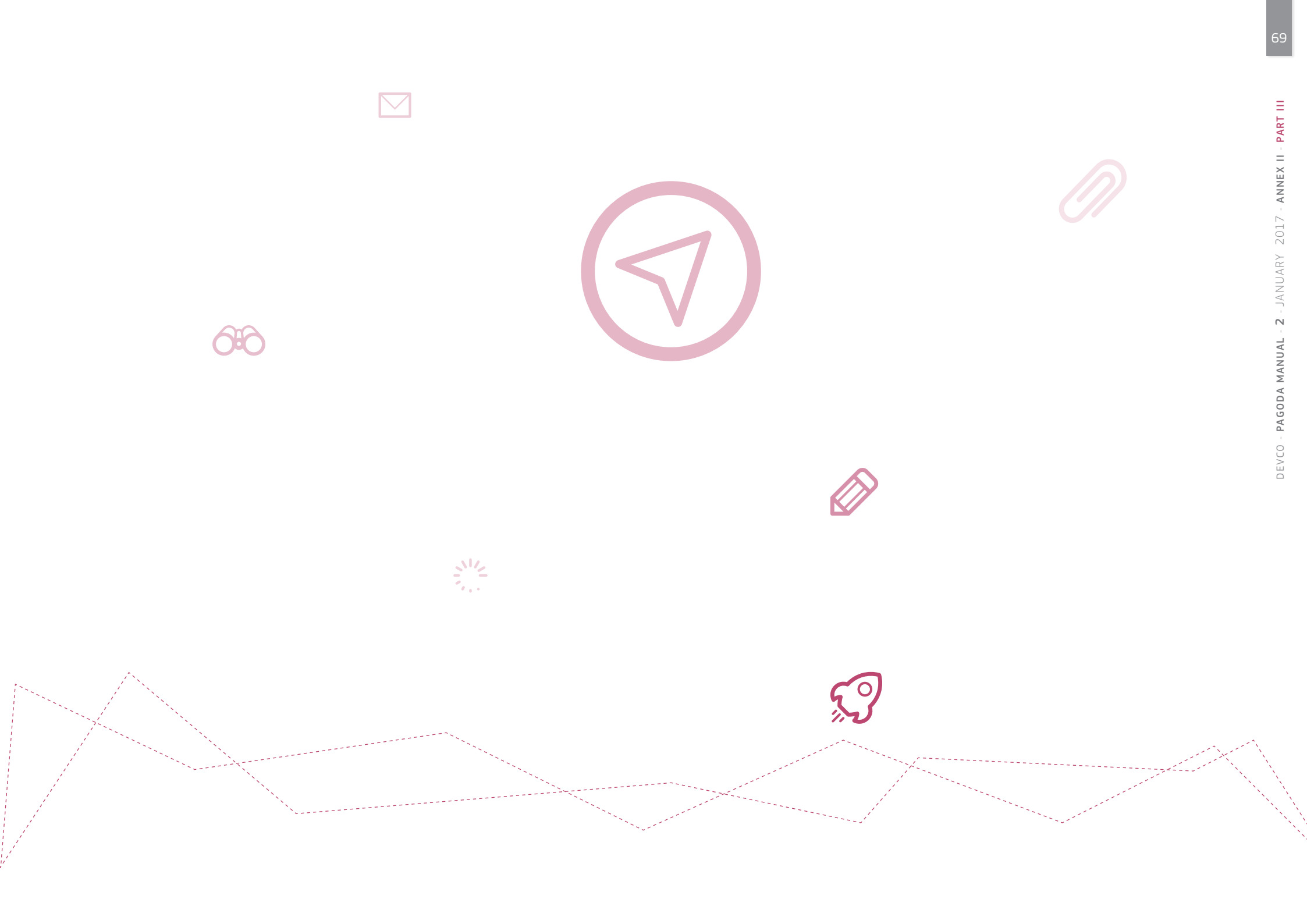
Note that the mere possibility of a conflict of interest is not sufficient to constitute a breach.

24.2 In the field of EU External Actions: where the Organisation or another donor provides co-financing other than in-kind contributions to the Action, the origin of the goods and the nationality of the organisations, companies and experts selected for carrying out activities in the Action shall be determined in accordance with the Organisation's Regulations and Rules. However, and in any event, goods, organisations, companies and experts eligible under the applicable regulatory provisions of the European Union shall be eligible.

For further information on rules on nationality and origin please consult chapter 2 of the Practical Guide (PRAG).

Under the CIR (i.e. not IPA I) and the EDF, supplies may originate from any country if the amount of the supplies to be procured is below EUR100.000 per purchase.

In-kind contributions are to be considered necessarily as earmarked contributions, which constitutes parallel co-financing. Therefore, it does not fall within the scope of this Article.





ANNEX II

a) Provisions applicable only to Co-Delegation Agreements

Text of the Article	Interpretation/ Guidelines on application
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The present Annex is to be applied only in case of Delegation Agreements which entail Co-Delegation.

Article 1 - Signature of Co-delegation agreements

Where the Organisation implements the Action together with Co-Delegates, the Co-Delegates become Parties to the Agreement together with the Organisation. The General Conditions apply to Co-Delegates mutatis mutandis, subject to the provisions of this Annex.

Each Delegatee (i.e. each Co-Delegatee and the Organisation) has a contractual relationship with the Contracting Authority, holding the correspondent rights and bearing the correspondent obligations described in the General and Special Conditions. The specific regime for Co-Delegation only entails adjustments to the provisions applicable to Delegation Agreement, by setting out specific obligations to the Co-Delegates (see *Article 3*), to the Organisation (see *Article 2*, notably regarding reporting and payments) and to both (*Articles 4-7*).



Article 2 - Additional obligations of the Organisation

In addition to the obligations stated in Annex II the Organisation shall:

- a) carry out the activities as described and assigned to it in Annex I;
- b) ensure coordination with all Co-Delegates in the implementation of the Action;
- c) be the intermediary for all communications between the Co-Delegates and the Contracting Authority;
- d) be responsible for supplying without delay all documents and information to the Contracting Authority which may be required under this Agreement, in particular in relation to the narrative reports, the requests for payment and the relevant management declaration and audit opinions from all Co-Delegates. Where information from the Co-Delegates is required, the Organisation shall be responsible for obtaining and consolidating this information before passing it on to the Contracting Authority. Any information given, as well as any request made by the Organisation to the Contracting Authority, shall be deemed to have been given in agreement with all Co-Delegates;
- e) inform the Contracting Authority of any event likely to affect or delay the implementation of the Action;
- f) inform the Contracting Authority as soon as the information is available, of any change in the legal, financial, technical, organisational or ownership situation of any of the Co-Delegates, as well as of any change in the name, address or legal representative of any of the Co-Delegates;
- g) be responsible in the event of monitoring and evaluations, as described in **Article 10** of Annex II, for collecting and providing all the necessary documents;
- h) establish the payment requests in accordance with the Agreement;
- i) be the sole recipient, on behalf of all the Co-Delegates, of the payments of the Contracting Authority. The Organisation shall ensure that the appropriate payments are then made to the Co-Delegates without unjustified delay;
- j) where relevant, repay funds to the Contracting Authority in line with **Article 15** of Annex II without prejudice to **Article 6**;
- k) not delegate any, or part of, the tasks listed above to the Co-Delegates or other entities.

The obligation described in **Article 2 a)** corresponds to the activities of the Organisation acting as a Delegatee, i.e. the activities related to the implementation of the Action carried out by the Organisation, according to the distribution of tasks established in the “Description of the Action” (Annex I).

The obligations described in **Article 2 b) – 2k)** refer to the coordination tasks performed by the Organisation as the coordination entity.

The costs related to the Organisation’s coordination tasks, directly linked with the obligations set out in this Article, are to be considered as direct eligible costs, subject to the conditions of **Article 18.1**

Article 3 - Obligations of the Co-delegatees

The Co-Delegates shall:

- a) carry out the activities as assigned to each Co-Delegatee in Annex I, taking all necessary and reasonable measures to ensure that the Action is carried out in accordance with the description of the Action in Annex I and the terms and conditions of this Agreement;
- b) ensure that the Organisation has or obtains the data needed to draw up the reports, financial statements and other information or documents required by this Agreement and the annexes thereto, including any information needed in the event of monitoring or evaluations, as described in **Article 10** of Annex II, as well as the relevant management declarations and audit or control opinion referred to in **Articles 3.10** to **3.12** of Annex II (this does not apply to those documents and Co-Delegatees that fall within an arrangement with the European Commission to provide either of them annually);
- c) ensure that all information to be provided and requests made to the Contracting Authority are sent via the Organisation;
- d) agree with the Organisation upon appropriate internal arrangements for the internal coordination and representation of the Co-Delegates vis-a-vis the Contracting Authority for any matter concerning this Agreement, consistent with the provisions of this Agreement and in compliance with the applicable legislation(s);
- e) be responsible in the event of audits and checks, as described in **Article 17** of Annex II for providing all the necessary documents, without prejudice to **Article 5**.

To comply with the mentioned obligations, it is expected that each Co-Delegatee is entitled to a flat-rate remuneration which shall not exceed 7% of the eligible direct costs of the respective component managed by it, following the regime set out in **Article 18.3**.

In order to comply with its obligations on reporting as Coordinator, as stated in subparagraph b), the Organisation should timely receive from each Co-Delegatee the necessary information, preferably already in the form of narrative and financial report. That is to say, the role of the Organisation should be mainly of compilation of the different sections of the report.



Article 4 - Termination and suspension

4.1 **Article 13** of Annex II is amended as follows:

- a) in the first paragraph of **Article 13.1** of Annex II, “may terminate” shall be replaced by “may terminate or partially terminate” and the “the Organisation” shall be replaced by “a Delegatee”. In addition to **Article 13.1** and in respect thereof, the Contracting Authority shall discuss prior to termination the possible reallocation of the tasks and responsibilities of the Delegatee which is terminated, in case of partial termination, among the remaining Delegatees, or on its possible replacement by a third party.
- b) In duly justified cases, the Organisation may propose to terminate the participation of a Co- Delegatee to this Agreement. For this purpose, the Organisation should communicate to the Contracting Authority the reasons for the proposed termination of its participation and the date on which it should take effect, as well as a proposal on the reallocation of the tasks and responsibilities of the Co-Delegatee whose participation is terminated, or on its possible replacement. The proposal should be sent in good time before the termination is due to take effect. If the Contracting Authority agrees, the Agreement should be amended accordingly in conformity with **Article 11**. If the Contracting Authority does not agree, either Party may terminate the Agreement in accordance with **Article 13.3**.

For the purpose of subparagraph b), following the proposal of Organisation, the Co-Delegatee(s) may also provide observations.

4.2 In the case of termination of the participation of a Delegatee in accordance with **Article 4.1 a) or b)**, the final payment regarding the activities allocated to the Delegatee concerned shall be included in the next payment request following termination communicated to the Contracting Authority.

Article 5 - Framework agreements and special arrangements

Where the Organisation and a Co-Delegatee have both concluded framework agreements with the European Commission, the framework agreement of each Delegatee shall apply for the purpose of this Agreement, except regarding obligations on reporting and payments, to which only the Organisation’s framework agreement shall apply.

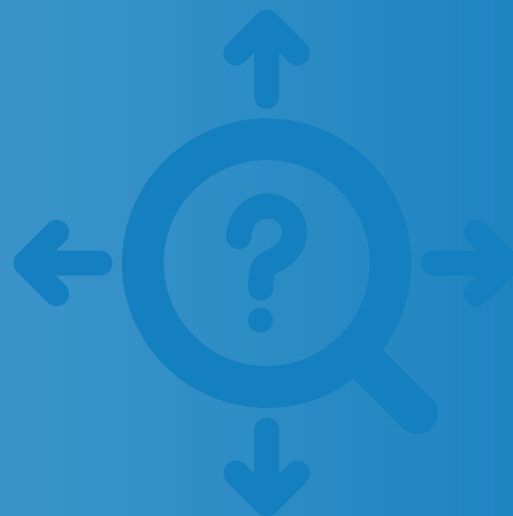
Article 6 - Financial responsibility

Each Delegatee shall be financially responsible solely for the part of the Action to be implemented by it (including by its Contractors and Grant Beneficiaries), as set out in the Annex I, or for the activities assigned to it during the implementation of the Action in case these are not defined in the Annex I. The Contracting Authority shall recover any unduly paid or incorrectly used funds directly from the Organisation unless the Organisation can demonstrate that amounts to be recovered under this Agreement only relate to activities that have or should have been implemented by a Co-Delegatee in accordance with Annex I. In such case, the Contracting Authority will recover directly from the concerned defaulting Co-Delegatee.

Article 7 - Dispute settlement

Where one of the Delegatees is an international organisation, **Article 14.4.b** of Annex II shall apply to the entire Agreement. In case a dispute does not concern all Delegatees, the dispute settlement mechanism foreseen in **Article 14.4.b** will apply between the Contracting Authority and the relevant Delegatee(s).





ANNEX II

b) Provisions applicable only to calls for proposals and other specific circumstances

Text of the Article	Interpretation/ Guidelines on application
The present Annex is to be applied only in case the signature of the Grant Agreement follows a call for proposals or whenever it entails financial support to third parties, agreements with affiliated entities and multi-beneficiary agreements.	



Article 1 - Financial support to third parties

1.1 In order to support the achievement of the objectives of the Action the Organisation may award financial support if so provided by the Special Conditions. The Organisation shall ensure that the Contracting Authority and the European Commission where it is not the Contracting Authority, OLAF, the European Court of Auditors and any authorised representatives may exercise their rights under *Article 17* of Annex II also towards the third parties awarded financial support.

Financial support is an activity carried out within the PA Grant Agreement, and may be implemented by the Organisation, Co-Beneficiaries and Affiliated Entities, provided that the mandatory conditions stated in this Article are fulfilled.

The persons/entities receiving the financial support are the final recipients of the EU funds. This means that it is not limited to sub-granting schemes.

Guidelines for applicants of a call for proposals may, as appropriate, restrict the scope of the financial support, for instance setting a lower or maximum amount, or targeting only specific categories etc. The Commission will only verify if the distribution of the funds to third parties has been done following the criteria established in the grant proposal by the Organisation.

It is essential for the eligibility of financial support, that all these mandatory conditions are strictly defined in the PA Grant Agreement (notably in Annex I), in compliance with the guidelines for applicants (where applicable) and of any conditions or restrictions set out:

- a) the objectives and results to be obtained with the financial support;
- b) the different types of activities eligible for financial support, on the basis of a fixed list;
- c) the types of persons/entities or categories of persons/entities which may receive financial support;
- d) the criteria for selecting these persons/entities and giving the financial support. If the Organisation's grant pillar has been positively assessed it is sufficient to state that the Organisation will select the recipients in line with their assessed rules and procedures;
- e) the criteria for determining the exact amount of financial support for each third party;
- f) the maximum amount which may be given;
- g) the eligible categories of persons/entities which are not necessarily those eligible under the call for proposals (where relevant) with regards to the Organisation, Co-Beneficiaries and Affiliated Entities: usually the basic acts do not impose any specific nationality rule on recipients of financial support. In fact, it is the guidelines for a specific call for proposals and/or the PA Grant Agreement that will set the relevant criteria, if needed. It may be the case where a nationality restriction is desirable/appropriate to achieve the results, or it may be not;
- h) the modalities through which the financial support is granted (e.g. following a call for proposals, direct award, in line with the Organisation's positively assessed rules and procedures for grants etc.) must also be specified.

Even if one of the items above is not «relevant» the point must be mentioned in the Description of the Action. For example, small amounts of cash support are given to refugees to support their living. In this case the financial support is not linked to specific activities. So, this fact should be mentioned in the Description of the Action, as well to avoid the impression that the aspect was simply overlooked.

The financial support may take the form of simplified cost options. For the sake of simplification, it is even advised to agree in the Description of the Action on unit or lump sum amounts, together with the criteria for payment of these amounts, rather than on reimbursement of costs, unless justified by the nature of the financial support (e.g. where the financial support targets a specific activity to be implemented by the third party).

Since financial support to third Parties is not subject to the same rules as grants provided by the Contracting Authority, the ceilings for simplified cost options do not apply and there is no need for a Commission decision to authorise recourse to unit or lump sums as financial support. The amounts may be agreed on by the Contracting Authority as part of the description of the Action.

The financial support may take the form of «unconditional cash transfer».

«Unconditional», means that financial support is given without anything in return, i.e. without any specific result other than helping the final recipients, e.g. support to human right defenders, scholarships to facilitate mobility, allowances to refugees, the unemployed, etc. The financial support may even be the primary aim of the Action and represent the core activity per se. It is not an issue provided that the objective of the Action clearly requires this type of financial support to third parties. Cash transfers are allowed provided that the Organisation can prove the payments (*for example a paper from the recipient acknowledging receipt of the cash amount*), as only verifiable costs are eligible. It should be noted that such evidence does not need to be submitted with reports to the Contracting Authority, but the Organisation (Co-beneficiary or Affiliated-Entity, as relevant) shall keep such records which may need to be disclosed in case of a verification.

«Unconditional», does not mean that the conditions for giving financial support are not established in the PA Grant Agreement. This would not be acceptable. The description of the Action shall contain all the information required above.

«Conditional» transfers are also possible (e.g. seed money to a micro-enterprise subject to establishment of favourable working conditions or recruitment of women).

Selection of third party recipients (award procedures)

The present Article does not impose any rules and procedures for the giving of financial support to third parties. In accordance with the EU Financial Regulation, the selection procedure has to be defined in each PA Grant Agreement individually (in the description of the Action).

Unless a relevant call for proposals, if any, foresees or establishes otherwise, the Organisation may propose its own rules and procedures to be used. For further information on the notion of financial support to third Parties please consult *section 6.9 of the Practical Guide* (Award of contracts & financial support to third parties by grant beneficiaries).

The third Parties receiving financial support are not subject to the same eligibility criteria as those applicable to the Organisation, Co-Beneficiaries and Affiliated Entities under the call for proposals (where relevant). Similarly, the financial support granted to those third Parties is not subject to the general principles applicable to grants, and the conditions for calculating the exact amount do not necessarily encompass the no-profit principle (i.e. there may be a case where the no-profit check is appropriate, or it may be not: this has to be specified in the call for proposals and/or the PA Grant Agreement).

All of these obligations must be respected. For additional info on financial support to third Parties and on how financial support shall be treated under calls for proposals, please consult *section 6.9 of the Practical Guide* (Award of contracts & financial support to third parties by grant beneficiaries).

1.2 To the extent relevant, the Organisation shall ensure that the conditions applicable to the Organisation under **Articles 5**–Conflict of interests, **8**–Communication and visibility and **16**–Accounts and archiving of Annex II are also applicable to third parties awarded financial support.

1.3 The maximum amount of financial support shall be specified in Annex I. Where financial support is defined as one of the main purposes of the Action in the Special Conditions it may exceed EUR 60.000 per each third party.

1.4 The description of the Action in Annex I shall define the types of entities eligible for financial support and include a fixed list with the types of activity which may be eligible for financial support. The criteria for the selection of the third party recipients of this financial support, including the criteria for determining its exact amount, shall also be specified.

1.5 The Contracting Authority shall consider the costs of financial support as ineligible if the financial support is not given by the Organisation in accordance with the conditions referred to in **Articles 1.1, 1.3 and 1.4** or if the third party recipient of financial support has substantially breached one of the obligations listed in **Article 1.2**, or if the third party recipient has not used the funds for the purpose foreseen in its agreement with the Organisation, if any.

1.6 In the field of EU External Actions, the Organisation shall provide in its report to the Contracting Authority information on the award and implementation of any financial support given. The report shall demonstrate compliance with the requirements defined in accordance with **Articles 1.3 and 1.4** 1st sentence and describe the results achieved.

On the one hand, where the recipients of financial support implement part of the project and manage the funds in a same similar manner as the Organisation, all those obligations have to be observed. On the other hand, if the support is e.g. provided to refugees, none of the listed obligations need to be observed.

The ceiling for the financial contribution to third Parties is EUR 60 000 per third party (recipient of financial support) unless the redistribution of the EU contribution is one of the main purposes of the Action. There is no overall ceiling for the total financial support that can be distributed in the course of an Action. There is no need for a derogation to raise the ceiling above EUR 60 000. The Contracting Authority and the Organisation simply have to agree that financial support is one of the main purposes of the Action by leaving the related optional phrase in **Article 7.1. of the Special Conditions in the contract.**

Responsibility

For financial support to third Parties, the Organisation is fully responsible for the implementation of the Action in compliance with the PA Grant Agreement.

If the conditions set out in the PA Grant Agreement for financial support to third Parties are not fulfilled, the corresponding costs incurred by the Organisation will not be eligible (or the EU contribution may be reduced, depending on the breach).

Example: The financial support to third Parties is, in accordance with the PA Grant Agreement to be given to local NGOs for teaching activities. They are used by local NGOs for their own promotion. The financial support given by the Organisation is ineligible to be charged to the EU Contribution which was awarded specifically for the teaching activities (regardless of who is at fault and of whether the Organisation decides to recover that money).

Organisation cannot argue that the Action was not properly implemented due to a failure by the recipients. If the Action was not properly implemented, the contribution to the Organisation may be reduced.

Article 2 - Multi-beneficiary agreements

- 2.1 Where the Organisation implements the Action together with Co-Beneficiaries, the Co-Beneficiaries become parties to the Agreement together with the Organisation. These General Conditions apply to Co-Beneficiaries *mutatis mutandis*, subject to the provisions of this Article.

As stipulated in *Article 2.1*, the general conditions apply to Co-Beneficiaries *mutatis mutandis* which means that Co-Beneficiaries have to comply with them to the same extent as the Organisation.

As for the Organisation, nothing in the PA Grant Agreement should be interpreted as limiting the Organisation's or Co-Beneficiary's privileges and immunities when either is an international Organisation.



2.2 The Organisation shall:

- a) monitor that the Action is implemented in accordance with this Agreement and ensure coordination with all Co-Beneficiaries in the implementation of the Action;
- b) be the exclusive intermediary for all communications between the Co-Beneficiaries and the Contracting Authority;
- c) be responsible for supplying all documents and information to the Contracting Authority which may be required under this Agreement, in particular in relation to the narrative reports and the requests for payment. Where information from the Co-Beneficiaries is required, the Organisation shall be responsible for obtaining, verifying and consolidating this information before passing it on to the Contracting Authority. Any information given, as well as any request made by the Organisation to the Contracting Authority, shall be deemed to have been given in agreement with the Co-Beneficiaries concerned;
- d) inform the Contracting Authority of any change in the legal, financial, technical, organisational or ownership situation of any of the Co-Beneficiaries, as well as of any change in the name, address or legal representative of any of the Co-Beneficiaries;
- e) be responsible in the event of audits, checks, monitoring or evaluations, as described in **Articles 10** and **17** of Annex II for providing all the necessary documents, without prejudice to **Article 2.8** and to the Co-Beneficiary own responsibilities under **Article 17** of annex II;
- f) have full financial responsibility for ensuring that the Action is implemented in accordance with this Agreement. This includes the implementation done by the Co-Beneficiaries. By exception, where a Co-Beneficiary's pillars have been positively assessed by the European Commission and the Organisation can demonstrate that amounts to be recovered under this Agreement only relate to activities that have or should have been implemented by the Co-Beneficiary in accordance with Annex I, the Contracting Authority shall recover these amounts from that Co-Beneficiary;
- g) be the sole recipient, on behalf of all of the Co-Beneficiaries, of the payments of the Contracting Authority. The Organisation shall establish the payment requests and ensure that the appropriate payments are then made to the Co-Beneficiaries without unjustified delay;
- h) where relevant, repay funds to the Contracting Authority in line with **Article 15** of Annex II.

The Organisation is the sole interlocutor for the Contracting Authority. All communication related to the PA Grant Agreement will be exclusively between the Contracting Authority and the Organisation. The Contracting Authority will disburse funds only to the Organisation who will then forward the relevant funds to the Co-Beneficiaries. This is without prejudice to the fact that the Co-Beneficiaries are also Parties to the PA Grant Agreement.

Subparagraph g)

Vis-à-vis the Contracting Authority, the financial responsibility for the implementation of the entire Action including the parts implemented by Co-Beneficiaries and Affiliated Entities rests with the Organisation. This means that the Contracting Authority will, where applicable, recover funds only from the Organisation. However, where the recovery is related to funds allocated to a specific Co-Beneficiary and this Co-Beneficiary is also an organisation whose pillars have been positively assessed the Contracting Authority will recover directly from that Co-Beneficiary.

2.3 The Organisation and the Co-Beneficiaries shall:

- a) carry out the Action jointly taking all necessary and reasonable measures to ensure that the Action is carried out in accordance with the description of the Action in Annex I and the conditions of this Agreement;
- b) ensure that the Organisation has or obtains the data needed to draw up the reports, financial statements and other information or documents required by this Agreement and the annexes thereto, as well as, without prejudice to **Article 2.8**, any information needed in the event of monitoring, evaluations or financial checks, as described in **Articles 10 and 17** of Annex II.

2.4 In duly justified cases, the Organisation may propose to terminate the participation of the Co-Beneficiary to this Agreement. For this purpose, the Organisation should communicate to the Contracting Authority the reasons for the proposed termination of its participation and the date on which it should take effect, as well as a proposal on the reallocation of the tasks of the Co-Beneficiary whose participation is terminated, or on its possible replacement. The proposal shall be sent in good time before the termination is due to take effect. If the Contracting Authority agrees, the Agreement shall be amended accordingly in conformity with **Article 11** of Annex II. If the Contracting Authority does not agree, either Party may terminate the Agreement in accordance with **Article 13.3** of Annex II.

2.5 In duly justified cases, the Contracting Authority may suspend the participation of a Co-Beneficiary in the Agreement for the reasons referred to in **Article 12.3** of Annex II or terminate the participation of a Co-Beneficiary in the Agreement for the reasons referred to in **Article 13.1** of Annex II.

2.6 In the case of termination of the participation of a Co-Beneficiary in accordance with **Article 2.4**, the request for payment for the Co-Beneficiary concerned shall be included in the next payment request following termination communicated by the Organisation.

2.7 The ceiling of EUR 60.000 for simplified cost options set forth under **Article 18.8** of Annex II applies to the Organisation and each Co-Beneficiary individually. Indirect costs shall not be eligible under the Agreement for a Co-Beneficiary who already receives an operating grant financed from the European Union budget during the period in question. Where the budget of the Action includes a breakdown per Co-Beneficiary and the Organisation, the Organisation and the Co-Beneficiaries are allowed to adjust the budget by transfers between themselves without an amendment to the Agreement.

Unlike Co-Beneficiaries, who may each claim up to EUR 60 000 simplified cost options, Affiliated Entities will be considered with the Organisation or Co-Beneficiary they are affiliated to, i.e. the two together may claim up to EUR 60.000.

- 2.8 Where the Organisation and a Beneficiary have both concluded framework agreements with the European Commission, the framework agreement of each Beneficiary shall apply for the purpose of this Agreement, except regarding obligations on reporting and payments, to which only the Organisation's framework agreement shall apply.

Article 3 - Affiliated Entities

- 3.1 Where the Special Conditions contain a provision on any Affiliated Entity, costs incurred by such entity will be eligible under the same conditions as those applicable to the Organisation, provided that it satisfies the same conditions under **Article 18**-Eligibility of costs of Annex II, and that the Organisation ensures that the Contracting Authority and the European Commission where it is not the Contracting Authority, OLAF, the European Court of Auditors and any authorised representatives may exercise their rights under **Article 17** of Annex II also towards the Affiliated Entity.

- 3.2 The Organisation shall ensure that **Articles 2**-General obligations, **4**-Liability towards third parties, **5**-Conflict of interest, **6**-Confidentiality, **7**-Data protection, **8**-Communication and visibility, **9**-right to use results and transfer of equipment, **10**-Evaluation and monitoring of the Action, **16**-Accounts and archiving, **23**-No profit, **24**-Contracting of Annex II and **Article 1**-Financial support to third parties of this Annex, are also applicable to the Affiliated Entity.

Only the Organisation and Co-Beneficiaries are parties to the PA Grant Agreement.

Their Affiliated Entities are neither beneficiaries of the Action nor parties to the PA Grant Agreement. However, they participate in the design and implementation of the Action and the costs they incur (including those incurred for implementation contracts and financial support to third parties) may be eligible, provided they comply with all the relevant rules already applicable to the Organisation under the PA Grant Agreement. Affiliated Entities must satisfy the same eligibility criteria as the Organisation and Co-Beneficiaries.

Only entities having a structural link with the Organisation or a Co-Beneficiary, in particular a legal or capital link, may be considered as Affiliated Entities. For further information on the notion of Affiliated Entities please consult *section 6.1.2 of the Practical Guide* (Grants - actors involved).

If an Affiliated Entity is unable to perform its activities due to Force Majeure this will be considered as a Force Majeure event affecting the Organisation/Co-Beneficiary.

This means that Affiliated Entities have to comply with the same rules as the Organisation when implementing the Action. The omission of some articles is only due to the fact that Affiliated Entities do not become parties to the PA Grant Agreement.







PAGODA Special Conditions

- Delegation Agreement

Text of the Article	Interpretation/ Guidelines on application
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Article 1 - Purpose¹

1. To be used in the context of standard Delegation Agreements under Indirect Management, including under a Blending Facility when the Action does not involve a Risk-sharing mechanism.

- 1.1 This Agreement defines the activities entrusted to the Organisation for the implementation of the Action **<fill in the title of the programme or project>** as described in Annex I (the "Action"). This Agreement lays down the rules for implementation, for the payment of the EU contribution, and defines the relations between the Organisation and the Contracting Authority.

Within the context of the negotiation and signature of the Agreement and its entry into force, a problem with the choice of management mode as stated in the Commission Decision may arise. In fact, some financing decisions may need to be modified to adapt the correct management mode under PAGODA 2.

It stems from the application of *Article 84* and *94 RAP* that a change of management mode is, in principle, a substantial change of the financing decision and therefore should be adopted following the same procedure as the initial decision.

Nevertheless, for cases where a change in the financing decision would be urgent (need to commit before end of the year or delay would gravely hamper the implementation on the ground), DG DEVCO can consider that certain circumstances may justify that the responsible Authorising officer takes the responsibility for changing the financing decision, provided that:

- a) the objectives, results and activities financed with the EU contribution should not be affected by the change;
- b) the Organisation remains the same;
- c) the elements required by *Article 84 FR* and *94 RAP* can be found in the financing decision albeit not in the completely explicit form.

With these underlying principles, in the case of changes from direct (direct award of a grant) to indirect management, DG DEVCO understands that the elements of *Article 94* would be fulfilled with the criteria for selection and eligibility for the direct award of a grant and that the change of management mode could be made at the level of the authorising officer. Certainly, a note for the file should document the gap between the financing decision as adopted by the College and the actual management mode used.

1.2 Select one option:

The Action is fully financed by the EU contribution.

or

The Action is a Multi-donor Action and the EU contribution [is] / [is not] earmarked.²

2. The EU Contribution is considered to be earmarked in the cases of parallel co-financing and not earmarked in the cases of joint co-financing.

1.3 In the performance of the activities, the Organisation shall:

- a) apply its own accounting, internal control and audit systems which have been positively assessed in the ex-ante pillars assessment. In case the pillar assessment raised some reservations the Organisation shall comply with the ad hoc measures stated in *Article 7*.³
- b) apply **specify** [its own procurement procedures, as assessed in the ex-ante pillars assessment] / [agreed rules for procurement procedures] **specify or delete** [and its own rules for the award of Grants, as assessed in the ex-ante pillars assessment⁴] / [agreed rules for the award of Grants].⁵
- c) perform the activities to be implemented under the Agreement in accordance with the principles of Sound Financial Management, transparency and non-discrimination, applying its positively assessed Regulations and Rules.
- d) be free to use any Regulations and Rules which have not been subject to the ex-ante pillar assessment to the extent that these Regulations and Rules are not in conflict with the provisions of this Agreement.

³ Conclusions of the pillar assessment should be considered and required measures, if any, should be included in Article 7.

⁴ The applicable rules may have been assessed under the grants pillar or under the sub-delegation pillar.

⁵ If the situation of a Co-Delegatee differs from that of the Organisation add the required information in Article 7.

1.4 The Action [is] / [is not] an EU External Action. In case of an EU External Action, add the applicable instrument/EDF: The Action is financed under <instrument under the EU Budget or EDF>.

As stated in *Article 1* (Definitions), an Action should be considered as «Multi-Donor» if it is co-financed by the EU contribution (whether or not earmarked) and other donor(s).

Whenever possible, preference should be given to projects which are carried out as a Multi-donor Action. That is to say, the Commission may preferably seek to finance an EU External Action together with other donors.

A Multi-donor Action may take the form of:

- a) **Joint co-financing**, in the case of pooling of resources without earmarking;
- b) **Parallel co-financing**, when the resources/funds are earmarked.

It is understood that Actions financed under the EU regional blending facilities and EU Trust Funds are by nature Multi-donor Actions and, therefore, exempted from the 36 month contracting deadline.

Subject to the positive outcome of the pillar assessment, the Organisation may use its own rules and procedures for Grant award and Procurement, as per *subparagraph 1.3 a) and b)*.

With respect to *subparagraph 1.3 d)* of the Special Conditions, it is understood that the Organisation applies exclusively its own Regulation and Rules to the recruitment of its Staff members, irrespective of their tasks or place of assignment. These are not procurement or Grant contracts and as such are not governed by the procurement or Grant pillar assessment. The Contracting Authority cannot impose procedures on the Organisation regarding this matter.

When the Organisation signs under presumption of conformity, the option(s) «agreed procedures» has (have) to be selected and in *Article 7* it should be stated that the Organisation will use its own procedures (for procurement and/or grants) in application of the presumption of conformity.

1.5 **Select one**

For international organisations which have established an arrangement to provide annually the management declaration:

[The Organisation shall send annually a management declaration to the European Commission Headquarters].

For international organisations in all other cases:

[The Organisation shall provide the management declaration with every progress and final report in accordance with Article 3.10 of the General Conditions.]

In the field of EU External Actions, for non-international organisations which have established an arrangement to provide annually the management declaration and the audit opinion:

[The Organisation shall send annually a management declaration and an audit or control opinion to the European Commission Headquarters.]]

For non-international organisations in all other cases:

[The Organisation shall provide the management declaration and the audit or control opinion with every progress and final report in accordance with Articles 3.11 and 3.12 of Annex II, no later than 15 February (for the Management Declaration) and 15 March (for the Audit Opinion) of the following financial year.]

1.6 This Agreement is subject to the provisions of <reference to any relevant framework agreement between the European Commission and the Organisation and, if relevant, the Co-Delegates>.



Article 2 - Entry into Force, Implementation Period and Contracting Deadline

Entry Into Force

2.1 The Agreement shall enter into force on the date when the last of the two Parties signs.

Implementation Period

2.2 The Implementation Period of the Agreement (the "Implementation Period") shall commence on: **<select one in agreement with the Organisation>**:

- [the day after the last Party signs.]
- **< a later date>**
- [the first day of the month following the date on which the first pre-financing is paid by the Contracting Authority.]
- **<a date preceding the signature of the Agreement, but not preceding the Organisation's request for a contribution.^{6>}**

6. This option shall be used if the Financing Decision so states or other justified cases (in the case of External Actions and CFSP, if an «event to be reported» is issued).

2.3 The Implementation Period of the Agreement as laid down in Annex I is **<indicate the number of months>**.

Contracting Deadline

2.4. Individual Procurement and Grant contracts implementing this Agreement shall be signed by the Organisation.

For Internal Policies insert: ⁷

[no later than **<indicate the number of months^{8>}** from the date of entry into force of this Agreement.]

For EU External Actions and CFSP select one:

[no later than thirty six (36) months from the date of entry into force of this Agreement]

[no later than **<indicate the number of months^{9>}** from the date of entry into force of this Agreement.]

7. No constraint for Internal Policies other than commensurate.

8. The contracting deadline cannot exceed the implementation period.

9. The number of months can only exceed 36 months in the case of Multi-donor Actions, whether the EU Contribution is earmarked or not. The contracting deadline cannot exceed the implementation period.

The Implementation Period starts at the date defined in the *Article 2.2* of the Special Conditions and lasts the number of months specified in the *Article 2.3*. The implementation period ends at the conclusion of that number of months (e.g. implementation period starts 1 January and it is to last 11 months => it ends on 30 November) but it can be extended, in accordance with *Article 11.1* of the General Conditions.

For the costs to be considered eligible for the EU funding (i.e. charged to the EU contribution), they must be legally incurred within the Implementation Period (see *Article 18.1*).

Between the end of the Implementation Period and before the End Date, it is still possible to amend the agreement (in line with *Article 11* of the General Conditions).

The Contracting Deadline should only refer to the legal commitments between the Organisation (or a Co-Delegatee) and a third party. That is to say, it would only apply to:

- a) Procurement Contracts entered into by the Organisation and a Contractor;
- b) Grant contracts entered into by the Organisation and a Grant Beneficiary.

This Contracting Deadline does not apply to subsequent Procurement Contracts and/or sub-Grant contracts entered into by the Grant Beneficiary and its contractors (or other third parties); such contracts may be signed by the Grant Beneficiary at any time before or during the Implementation Period. Note that costs related to these contracts are, however, only eligible if incurred during the Implementation Period.

When the Action is not a Multi-Donor Action (as defined in *Article 1.4* Special Conditions), the Procurement and Grant contracts signed for the implementation of the Action must be signed no later than 36 months following the date of entry into force of this Agreement, regardless of the actual duration of the Implementation Period (which could be longer).

In case of External Actions and CFSP Actions, multi-Donor Actions are exempted from the so-called «D+3» rule. That is to say, the contracting period is not limited to a 36 month deadline. A contracting deadline should, nevertheless, be specified for the concrete contract, which should be, in principle, aligned with the duration of the implementation period.

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This Article does not apply to:

- a) ordinary operating costs (excluding equipment) of the Organisation, Co-delegatee(s) and any other structure responsible for the implementation of the Action;
- b) any contingency reserves when it concerns the riders to existing legal commitments foreseen in the Special Conditions and Annex III (Budget of the Action);
- c) individual contracts to be concluded after early termination of an existing contract.

Such costs may be incurred until the end of the Implementation Period of the Action. This is without prejudice to the eligibility of such costs as foreseen in *Article 18* of the General Conditions.

Article 3 - Financing the Action

- 3.1 The total cost of the Action¹⁰ is estimated at [EUR or the accounting currency of the Organisation] ("Currency of the Agreement") <insert amount of the global action>], as set out in Annex III. The Contracting Authority undertakes to provide an EU contribution¹¹ up to a maximum of EUR <insert amount>, if the currency of the Agreement is not EUR insert which is estimated at <currency of the Agreement> <insert the amount corresponding to the amount of the EU Contribution in the currency of the Agreement at the InfoEuro rate of the month of signature of this Agreement>. The final amount will be established in accordance with *Articles 18* to *20* of Annex II.

10. This amount is introduced only for indicative purposes. It is an estimate and its evolution does not condition the EU contribution.

11. Where the contribution is financed by the European Development Fund, mentions of EU contribution must be read as referring to European Development Fund financing.

The «Currency of the Agreement» may be either EUR or the accounting currency of the Organisation. The choice of the Organisation regarding the Currency of the Agreement should be respected.

Nonetheless, the maximum EU contribution should always be expressed in the Special Conditions in EUR as an insurmountable threshold.

3.2 Remuneration

Select one out of the 2 options:

For the standard Delegation Agreement:

The remuneration of the Organisation by the Contracting Authority for the implementation of the activities entrusted under this Agreement shall be **<enter percentage not exceeding 7%>** of the final amount of eligible direct costs of the Action to be reimbursed by the Contracting Authority.

For the blending facilities (such as NIF, LAIF, CIF, AIF, IFCA, IFP, AfIF or WBIF) include:¹²

The Organisation, as Lead Finance Institution, shall be entitled to a flat remuneration¹³ of an amount of EUR xxx for the management and administration of the contribution made by the Contracting Authority under this Agreement¹⁴.

¹² The Acronyms abovementioned shall be read respectively as follows: Neighbourhood Investment Facility; Latin America Investment Facility; Caribbean Investment Facility; Asia Investment Facility; Central Asia Investment Facility; Pacific Investment Facility and Africa Investment Facility and Western Balkans Investment Framework.

¹³ For investment grants, the fee is to be calculated as 2% of the EU Contribution (and/or NIF Trust Fund if applicable) to the project up to a maximum of EUR 750,000, except if the 2% equals €200,000 or less, in which case the fee shall be the lesser of 7% of the investment grant or EUR 200,000.

For technical assistance, the fee is to be calculated as 4% of the EU Contribution (and/or NIF Trust Fund if applicable) to the project up to a maximum of EUR 300,000, except if the 4% equals EUR 150,000 or less, in which case the fee shall be the lesser of 7% of the technical assistance amount or EUR 150,000.

In the case of hybrid projects, the investment grant and technical assistance contributions shall be calculated individually on the above basis and totalled together.

¹⁴ This amount is indicative. The final remuneration will be fixed when the final EU contribution is determined.

3.3 Select one out of the 2 options:

When the rules of the Organisation do not cater for the reimbursement of interest on pre-financing:

Interest generated on pre-financing shall not be due.

When the rules of the Organisation cater for the interest on pre-financing in order to ensure equal treatment of donors:

Interest on pre-financing shall be treated as described in Article 7.

If a contingency reserve is foreseen, insert¹⁵:

[3.4 A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5 % of the direct eligible costs may be included in Annex III, to allow for adjustments necessary in the light of unforeseeable changes of circumstances on the ground. It can be used only with the prior written authorisation of the Contracting Authority, upon a duly justified request from the Organisation.]

¹⁵ This provision does not apply to Delegation Agreements under Blending Facilities.

It is understood that the remuneration of the Organisation for the implementation of the activities entrusted under the Agreement will not exceed 7%.

In the cases the Organisation's Management Board has set a fixed percentage of indirect costs, there is no need to discuss this percentage case by case. Such is the case, for example, of the fixed percentage of 7% requested by the UN Organisations.

In case of Multi-Donor Actions, particular attention will have to be given to the rules of the Organisation which could provide for a lower rate for the funding of other comparable Donors. In such a case, the Commission cannot be charged a higher fee than the other comparable Donors.

In the cases of Co-Delegation, it is expected that each Delegatee is entitled to an autonomous remuneration percentage, in proportion with the implementation activities such Delegatee carried out.

In Multi-Donor Actions, this means that the Organisation will only have to ask the Commission for written authorisation once it wishes to spend the part of the contingency reserve corresponding to the proportion of the EU contribution. It is assumed that when contingency is used, the Organisation consumes first other sources of funds and only if the last part of the contingency (corresponding to the EU's share of it) is needed, the Organisation should to request a prior written authorisation of the Commission.

Article 4 - Narrative and Financial Reporting and Payment Arrangement

For the standard Delegation Agreement:

4.1 The pre-financing rate is <....>%.¹⁶

16. The Parties have to agree on a pre-financing rate (X%). The determination of the amount of the pre-financing instalments corresponds to X% of the part of the forecast budget for the following reporting period of the Action which is being financed by the EU (excluding not authorised contingencies). Subject to the provisions of Article 19 of the General Conditions, each further instalment of pre-financing will thus consist of the remaining part of the budget financed by the EU for the previous period (where pre-financing rate is less than 100%) and the new pre-financing for the forecast budget for the subsequent 12 months, the latter at the pre-financing rate stated in Article 4.1.

A pre-financing rate of 100% has been agreed with the UN Organisations and with ADA, AECID, AFD, BTC, GIZ, KFW, PROPARCO, SIDA, MAECI-DGCS and LuxDev (agreed at the 12th EU-UN FAFA Working Group meeting and in Section III, *Article 2.4 a*) of the Framework Arrangement between the EC and MS Agencies) if so requested.



4.2 Payments shall be made in accordance with **Article 19** of Annex II. The following amounts are applicable, all subject to the provisions of Annex II:

First pre-financing instalment: **<Currency of the Agreement as specified in Art. 3.1> <value>**

Further pre-financing instalment(s): **<Currency of the Agreement> <amount>** following the end of the **<1st, 2nd, etc. reporting period, from date to date>**¹⁷ subject to the provisions of Annex II,¹⁸

Forecast balance of the final amount of the contribution, if any (subject to the provisions of Annex II): **<currency of the Agreement> <amount>**.

Where the Currency of the Agreement is not EUR insert:

The sum of the payments in the accounting currency of the Organisation shall not exceed the total EU Contribution in EUR.

For blending facilities (NIF, LAIF, CIF, AIF, IFCA, IFP, AfIF or WBIF) select one option:

First option

First pre-financing instalment¹⁹ EUR

<.....>

Second pre-financing instalment EUR

<.....>

Third pre-financing instalment EUR

<.....>

<add as many instalments as years>

Forecast balance²⁰ EUR

<.....>

Second option

A first pre-financing instalment of EUR **<insert amount>** shall be paid to the Organisation (corresponding to 100% of the Commission's part of the forecast budget for the subsequent 12- month period and to 100% of the remuneration mentioned under **Article 3.2**). Each further instalment shall be 100% of the Commission's part of the forecast budget for the subsequent 12- month period (or of the remaining period if shorter).

17. For EU External Actions and CFSP, by default, the reporting period is every 12 months as from the commencement of the Implementation Period.

18. For EU External Actions and CFSP, the further pre-financing instalments can be indicated as one global amount (in such case the actual instalments will be determined annually on the updated forecast for the next reporting period). In case there is a high level of certainty in the amounts the further pre-financing instalments, these can be broken down per payments and already reflected in the contract detailing with as many lines as instalments:

First pre-financing instalment.....EUR <.....>

Second pre-financing instalment.....EUR <.....>

...

Forecast balance.....EUR <.....>

19. The first pre-financing instalment includes 100% of the remuneration mentioned under Article 32

20. The forecast balance (final payment), if any, is the difference between the total amount of the EU contribution and the sum of the previous instalments.

Insert, if needed:

4.3 For specific reporting requirements add: **<Specify the applicable reporting requirements and length of reporting period, etc.>**

It is understood that the Organisation and the Commission will agree on the pre-financing rate referred to in **Article 4.1** of the Special Conditions duly taking into account the financing needs of the Organisation in accordance with the project implementation schedule and the EU budget availability.

The Special Conditions may include terms allowing the reporting period to be adjusted, as and when required, to allow for payments to be requested by the Organisation.

The amount of the first pre-financing corresponds to up to 100% of the EU's (in Multi-Donor Actions: proportional) share of the forecast budget for the first 12-month period of the Action (excluding contingencies, if any). The EU share is calculated by applying the percentage of EU co-financing to the forecast budget of the first 12-month period.

The rest of the EU contribution can be registered in this Article as one global amount, classified as «*Further Pre-financing Instalments*». In order to simplify implementation when there is a reasonable understanding for the amounts required for the following years, the breakdown per years as stated in footnote 18 can be used.

Each further instalment of pre-financing, the amount can be released by the EU as soon as the actual costs incurred and the legal commitments represent at least 70% of the immediately preceding instalment (and 100% of the earlier ones). The Organisation may submit a request for further pre-financing payment before the end of the reporting period, when the part of the costs paid by the Organisation to its staff or otherwise subject to legal commitment which is financed by the Contracting Authority is more than 70 % of the previous payments. In this case, the following reporting period starts anew from the end date of the period covered by this payment request.

No adjustments of figures are required (unless there is an amendment to the Budget), only the final payment may require re-calculation.

By default, interest on pre-financing is not due. Should the Organisation have the obligation to pay interest, in accordance with its Regulations and Rules (namely, to ensure equal treatment between donors), the conditions for the payment of such interest should be introduced in the Special Conditions.

The Framework Agreements can foresee specific provision regarding reporting and payment for each Organisation. Please check them. For Actions under EC-UN FAFA, due its specific nature, the minimum threshold of each pre-financing is 80%. If no special provisions are applicable, the threshold of pre-financing is from 0 to 100%.

The payment requests (including for the balance) and payments will be made in the «Currency of the Agreement» stated in art. 3.1 and 4.2 of the Special Conditions (it may be either EUR or the accounting currency of the Organisation).

Nonetheless, the maximum EU contribution should always be expressed in the Special Conditions in EUR as an insurmountable threshold.

Article 5 - Communication language and contacts

- 5.1. All communications to the Contracting Authority in connection with the Agreement, including reports referred to in **Article 3** of Annex II, shall be in **<specify the language²¹>**. If requested by the Contracting Authority, they shall be accompanied by a translation or a summary in English or French where the language of the Agreement is not English or French.

21. EN, FR, ES or PT.

Article 5.1 does not imply the obligation to provide English or French translations where the other language has been defined as the language of the agreement.

- 5.2. Any communication relating to the Agreement shall be in writing, shall state the number and/or title of the Action, and shall use the following addresses below.
- 5.3. Any communication relating to the Agreement, including payment requests and attached reports, and requests for changes to bank account arrangements shall be sent to:

For the Contracting Authority

[Option 1: where the Contracting Authority is the European Commission:

European Commission

<Directorate-General for **insert responsible DG**>

For the attention of **<address of the finance unit/section>**

Copies of the documents referred to above, and correspondence of any other nature, shall be sent to:

European Commission

< Directorate-General for **insert responsible DG**>

For the attention of **<address of the management unit/section>**]

[Option 2: where the Contracting Authority is not the European Commission:

<address of the Contracting Authority's management department>]

[A copy of the reports referred to in **Article 3** of Annex II and the reports, publications, press releases and updates relevant to the Action referred to in **Article 8.6** of the General Conditions shall be sent to **<insert address>**]

For the Organisation

<address of the Organisation for correspondence>

- 5.4 Ordinary mail shall be deemed to have been received on the date on which it is officially registered at the address referred to above.
- 5.5 The contact point within the Organisation which shall have the appropriate powers to cooperate directly with the European Anti-Fraud Office (OLAF) in order to facilitate the latter's operational activities shall be: **<complete OLAF contact point within the Organisation>**.
- 5.6 All exchanges concerning the Early Detection and Exclusion System shall take place between the Contracting Authority and the authorised person designated by the Organisation, which is:
<Insert here the contact of the designated person or the contact of the liaison point if there is one>.

Article 6 - Annexes

6.1 The following documents are annexed to these Special Conditions and form an integral part of the Agreement:

Annex I: Description of the Action (including the Logical Framework of the Action)²²

Annex II: General Conditions for PA Grant or Delegation Agreements (Part III on PA Grant Agreements does not apply)

[Annex II.a: Provisions applicable only to Co-Delegation Agreements]

Annex III: Budget for the Action

Annex IV: Financial Identification Form²³

Annex V: Standard Request for Payment

Annex VI: Communication and Visibility Plan²⁴

Annex VII: Management Declaration template

²² Indicative Results Indicators measuring Outputs and Outcomes as determined by the nature of the Action, have to be included in Annex I attached to the Agreement.

²³ Where payment is to be made to a bank account which is already known to the Contracting Authority, the Organisation may provide a copy of the relevant financial identification form: http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm. If required, the Organisation shall provide a copy of the Legal Entity File: http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm.

²⁴ The Communication and Visibility plan describes the measures to acknowledge that the Action receives EU funding.

Annex I – Description of the Action

This Annex is a vital document within the regime of the PAGoDA template. It should be comprehensively filled in. It should comprise, inter alia, the following elements:

1. Background
2. Relevance of the Action
3. Objectives (overall objectives and indicators outputs)
4. Activities
5. Methodology
6. Indicative Action Plan
7. Implementation Arrangements
8. Leverage effect
9. Sustainability
10. Logical Framework
11. General overview on visibility and communication

There is no obligation to use a specific template for Annex I. The Organisation can use its own format or base it on an existing document (namely agreed with the Government and/or other donors), provided that it includes the referred elements and the reporting requirements.

There is no obligation to use any specific form of Logical Framework of the Action (only the elements constituting it are mandatory) but, as an example, an English version of the standard Logical Framework of the Action template is available at the end of this Manual.

There are no fixed templates for Annexes I and III and the Organisation can use its own project/program documents. The Annex III/Budget should reflect the structure normally used by the Organisation in its own accounting system. It is not advisable to impose models which do not reflect this structure (for instance, Annex III of the EU Grant Contract). The advantages of reflecting the budget structure of the Organisation include more robust financial reporting and audit trail showing the link between the financial report and the underlying accounting methods.

Annex III – Budget

The Budget should describe the financial implications of the information included in Annex I - Description of the Action.

Annex III should be expressed in the currency of the Agreement.

When the budget is expressed in the accounting currency of the Organisation it is not necessary to have a column with the conversion in EUR (that would be in any case only indicative).

As there is no standard template for the budget (except where the International Organisation responds to a call for proposals), there is room for discussion on what constitutes a budget heading. In order to avoid disputes at a later point, this should be clarified between the Contracting Authority and the International Organisation when a contract is being signed.

However, regardless of the model used, clarifications on the budget should be sought by the Contracting Authority's services during the negotiation process in order to ensure a good understanding of the information contained in the document provided by the Organisation and to avoid any dispute at a later stage. This information should be used for the purpose of the reporting requirements. In particular, the structure of the budget for the action will determine to a great extent the structure of the financial reports to be provided by the Organisation.

- 6.2 In the event of a conflict between the present Special Conditions and any Annex thereto, the provisions of the Special Conditions shall take precedence. In the event of a conflict between the provisions of Annex II "General Conditions" and where applicable including Annex II.a) and those of the other Annexes, the provisions of Annex II "General Conditions" and where applicable including Annex II.a) shall take precedence.



Article 7 - Additional specific conditions applying to the Action

Optional if a derogation or supplement to some of the articles of the Annexes is needed.²⁵

25. Any supplementary or derogation provisions not mentioned in this template shall be consulted with DG BUDG D1 and D2 for EU Internal Policies and with DG DEVCO R3 for EU External Actions and CFSP.

The introduction of additional supplementary provisions and derogations should be done *in consultation with DG DEVCO – R3*.

Some Organisations have agreed on standard contractual derogations and supplementary provisions reflected in the respective Framework Administrative Agreements / Arrangements. Such provisions should be copied respectively in *Articles 7.1* and *7.2* of the contract.

The interpretative provisions provide relevant guidance (please check them in the Framework Agreement of the respective Organisation). They should not be introduced in the individual contract.

> Supplementary Provisions

7.1 The following shall supplement the General Conditions:



For costs of a project office:

- 7.1.x Where the implementation of the Action requires the setting up or the use of one or more project offices, the Organisation may declare as eligible direct costs the capitalised and operating costs of the structure if all the following conditions are fulfilled:
- a) They comply with the cost eligibility criteria referred to in **Article 18.1** of Annex II;
 - b) They fall within one of the following categories:
 - i) costs of staff, including administration and management staff, directly assigned to the operations of the project office. The tasks listed in the Description of the Action (Annex I), undertaken by staff assigned to the project office will be directly attributable to the implementation of the Action.
 - ii) travel and subsistence costs for staff and other persons directly assigned to the operations of the project office;
 - iii) depreciation costs, rental costs or lease of equipment and assets composing the project office.
 - iv) costs of maintenance and repair contracts specifically awarded for the operations of the project office;
 - v) costs of consumables and supplies specifically purchased for the operations of the project office;
 - vi) costs of IT and telecommunication services specifically purchased for the operations of the project office;
 - vii) costs of energy and water specifically supplied for the operations of the project office;
 - viii) costs of facility management contracts including security fees and insurance costs specifically awarded for the operations of the project office;
 - c) The Organisation declares the eligible direct costs of the project office as actual costs or for staff costs on the basis of unit costs determined by the Organisation according to its usual accounting practice;
 - d) The Organisation declares as eligible only the portion of the capitalised and operating costs of project office which corresponds to the duration of the Action and
 - i) the rate of actual use of project office for the purposes of the Action; or
 - ii) the rate of use of a project office for the purposes of the Action, determined by the Organisation on the basis of a simplified allocation method, provided that the allocation method is compliant with the Organisation's usual accounting and management practices, applied in a consistent manner regardless of the source of funding, and based on an objective, fair and reliable allocation key.

Nature of the supported action or tasks

The implementation of an action often requires deployment of staff to manage operations in the field or set up an office at another location. Reimbursement of those costs may be justified to the extent those costs are additional to the normal functioning of the Organisation.

The costs incurred in running offices cover a wide range of items, such as staff (assigned to many different tasks), buildings, equipment, security fees, etc., which may be difficult to track individually or to assign to a specific project.

Therefore, it is possible the reimbursement of office costs determined on the basis of cost accounting data, thus contributing to the simplification of procedures and reduction of administrative errors linked to the reporting of actual office costs.

Method for determining amounts in the simplified form for office costs

Cost allocation method

The Organisation may declare as eligible direct costs the portion of the capitalised and operating costs of the office that corresponds to the duration of the action and the rate of office use for the purposes of the action, as determined by the organisation on the basis of a simplified allocation method that is:

- a) compliant with the organisation's usual accounting and management practices and applied in a consistent manner regardless of the source of funding; and
- b) based on an objective, fair and reliable allocation key. Some examples are:
 - i) *pro rata the number of staff assigned to the action (as compared with the total number of staff in the office or the entire infrastructure where the office is located, e.g. the organisation's headquarters);*
 - ii) *pro rata the time spent on the action (as compared with the total availability time of the office);*
 - iii) *pro rata the weight of the EU contribution to the action (as compared with the total funding of the projects implemented through the office); and*
 - iv) *pro rata the space occupied for the purpose of the Action (as compared with the total space available in the office or the entire infrastructure where the office is located, e.g. the organisation's headquarters).*

>>

Compliance of the cost allocation method

Upon request by the entity, the Commission or a Contracting Authority from a partner country may establish ex ante compliance of the entity's allocation method for the costs of the office with the conditions set out above (regarding cost allocation method). The approval of the entity's cost accounting practices shall be based on:

- a) a description prepared by the entity of the allocation method it uses to determine office costs in accordance with its usual cost accounting and management practices; and
- b) evidence that the allocation method satisfies the conditions set out above (regarding cost allocation method).

Evidence shall take the form of a report stating that the entity's allocation method complies with the conditions previously established. This can be drafted or commissioned by the Commission, a partner country's Contracting Authority, an independent audit function in the organisation or an independent external auditor who is

- a) a registered member of a national accounting or auditing body or institution which in turn is a member of the International Federation of Accountants; and
- b) certified to perform (statutory) audits.

If the Commission or a partner country's Contracting Authority approves the entity's allocation method, the Contracting Authority will not challenge ex post the office costs declared, provided that the allocation method used complies with that approved ex ante. This is without prejudice to the powers of the European Anti-Fraud Office and to implementing the conclusions to be drawn from its investigations. Where no ex ante approval has been given, the Contracting Authority may verify and challenge ex post the office costs declared by the entity in application of the method.

Any change to the allocation method shall be notified to the Commission or the Contracting Authority and may lead to a reassessment of its compliance with the conditions set out above (regarding cost allocation method).

Ex ante assessment of the Organisation's methodology for Project Offices

When the report is carried out by an independent audit function in the Organisation or an independent external auditor, the Commission (or a Contracting Authority from a partner country when relevant) will receive such report. This report and the description prepared by the entity of the allocation method it uses will be used as the basis of approval.

For the blending facilities (such as NIF, LAIF, CIF, AIF, IFCA, IFP, AfIF or WBIF) insert if needed the leverage effect:

7.1.x This Agreement targets an indicative leverage effect of **<insert the figure amount1/amount2>**
 For this purpose, the Organisation shall report in the progress and final reports referred to in **Article 3** of Annex II on the target leverage effect, the achieved leverage effect and the added value of the EU contribution

If VAT, taxes, duties and charges are not eligible, i.e the basic act/financing agreement excludes their eligibility

[7.1.x **<VAT/ taxes, duties and charges >** are not eligible [for the [following] activities as described in Annex I].

If the Organisation implements the Action together with Co-Delegates add:

[7.1.x For the purpose of this Agreement, the following legal [entity is considered a Co-Delegatee] / [entities are] considered Co-Delegates]:
<Full official name as mentioned in the LEF of any Co-Delegatee>
[<Legal status (organisation)>]
[<Organisation official registration number>] <Full official address>
[VAT number, for VAT registered beneficiaries]
 Repeat as many times as Co-Delegates

If the Organisation signs on behalf of the Co-Delegates, do not add any signatures at the end and include here:

In case the Organisation signs on behalf of all Delegates, the Contracting Authority does not require the proof of a specific mandate. It is the Organisation's responsibility to ensure it has been properly mandated.

7.1.x The Organisation signs this agreement on behalf of all Delegates.

If the Organisation signs on behalf of all Delegates, the Contracting Authority does not require a concrete mandate. It is the Organisation's responsibility to have such power of attorney.

For cases of Co-Delegation where the Organisation is a UN Body acting as Administrative Agent, insert the following provision:

[7.1.x For the purpose of this Agreement, the Organisation acts as UN Administrative Agent, under the following conditions:

- a) The Organisation shall serve as the administrative interface between the Contracting Authority, other donors and the Participating UN Organisations. The monitoring task established in **Article 2.b** of Annex II.a shall be implemented in accordance with the mandate of the UN Administrative Agent.
- b) In addition to the tasks described in **Article 2** of Annex II.a, the Organisation shall act as Administrative Agent for the UN Organisations and will therefore:
 - i) receive financial contributions from all donors that wish to provide financial support to the Action;
 - ii) administer the funds received, in accordance with its applicable rules & regulations, including the provisions relating to winding up the Action and related matters;
 - iii) subject to availability of funds, disburse such funds to each of the Participating UN Organisations in accordance with instructions from the Steering Committee, taking into account the budget set out in the approved programmatic document/Joint Programme Document²⁶, as amended in writing by the Steering Committee;
 - iv) consolidate statements and reports, based on submissions provided to the Administrative Agent by each Participating UN Organisation, as set forth in the TOR/Joint Programme Document, and provide these to each donor that has contributed to the Fund/Programme Account and to the Steering Committee;
 - v) provide final reporting, including notification that the Action has been operationally completed;
 - vi) disburse funds to a Participating UN Organisation for any additional costs of the tasks that the Steering Committee may decide to allocate in accordance with the TOR/Joint Programme Document.
- c) A coordination mechanism (referred to as the “Steering Committee”) ²⁷to facilitate the effective and efficient collaboration between the Participating UN Organizations and the host Government for the implementation of the Fund or Programme shall be established. The detailed description of key roles, responsibilities and functions of the Steering Committee is provided in Annex I (“Description of the Action”).
- d) Without prejudice to points 2.b) to 2.k) of **Article 2** of Annex II.a), the Organisation shall be solely responsible for the performance of tasks assigned to it in Annex I and in the specific agreement between itself and the Co-Delegates.
- e) By derogation from **Article 3** of Annex II, the Organisation shall provide the Contracting Authority with the following reports, in the same language as the Agreement, based on the reports provided by each UN Participating Organisation and prepared in accordance with the accounting and reporting procedures applicable to it:

In cases the Organisation is a UN Body acting as Administrative Agent, such Organisation is entitled to claim the costs of coordination up to a maximum of 1% of the other direct eligible costs. Such costs of coordination shall comply with the conditions of *Article 18.1*.

- i) annual consolidated narrative progress reports to be provided no later than five months (31 May) after the end of the calendar year;
- ii) annual consolidated financial reports, as of 31 December with respect to the funds disbursed from the Fund/Programme Account, to be provided no later than five months (31 May) after the end of the calendar year;
- iii) final consolidated narrative report to be provided no later than six months (30 June) after the end of the year following the financial closing of the Action and/or end of implementation period, whichever comes first;
- iv) in case of Multi-donor Actions which continue after the end of the implementation period of this Agreement, a final consolidated financial report, based on uncertified final financial statements and final financial reports, to be provided no later than six months (30 June) after the end of the year following the financial closing of the Action and/or end of implementation period, whichever comes first.

26. As used in this document, an approved programmatic document refers to an annual work plan or programme/project document, etc., which is approved by the Steering Committee for fund allocation purposes.

27. The Steering Committee (SC) is co-Chaired by the Government and the UN Resident Coordinator (RC) or the Deputy Special Representative of the Secretary General (DSRSG). Members include the UN and government representatives and may also include donors. The decision on the inclusion of donors is taken at the country level. Steering Committee composition ensures the principles of national ownership, inclusiveness and balanced representation, as well as the need to have a manageable size for decision-making effectiveness.

If needed for interest on pre-financing, insert:

7.1.x Describe how interest on pre-financing shall be treated

If needed add other supplementary conditions, insert:

7.1.x]

> Derogation Provisions

7.2 The following derogations from the General Conditions shall apply:

If needed, insert:

7.2.x By derogation from **Article 11.3** of the General Conditions, Indicators and their related targets, baselines and sources of verification shall only be amended pursuant to **Article 11.1**.

In the field of External Actions, this provision should, in principle, be included for Actions carried out under the Blending Facilities. In all other cases, the provision should be included where appropriate, in order to ensure coherence with the External Actions Results Framework.

If needed in case the Implementation Period starts later than the entry into force of the Agreement:

7.2.x By derogation of **Article 19.1**, first pre-financing instalment will be paid by **<insert date>**

If needed for the blending facilities (such as NIF, LAIF, CIF, AIF, IFCA, IFP, AfIF and WBIF) insert:

- 7.2.x By derogation from *Articles 3.1* and *3.7.i* of the General Conditions, no work plans shall be prepared.
- 7.2.x By derogation from *Article 11.3*, any transfers between the Action components (i.e. investment grant, technical assistance, interest rate subsidies) must be done in accordance with *Article 11.1*.

This provision may be added on a case by case basis for blending projects.

If needed, additional derogation conditions:

7.2.x By derogation from Article, <insert derogation>

Select one

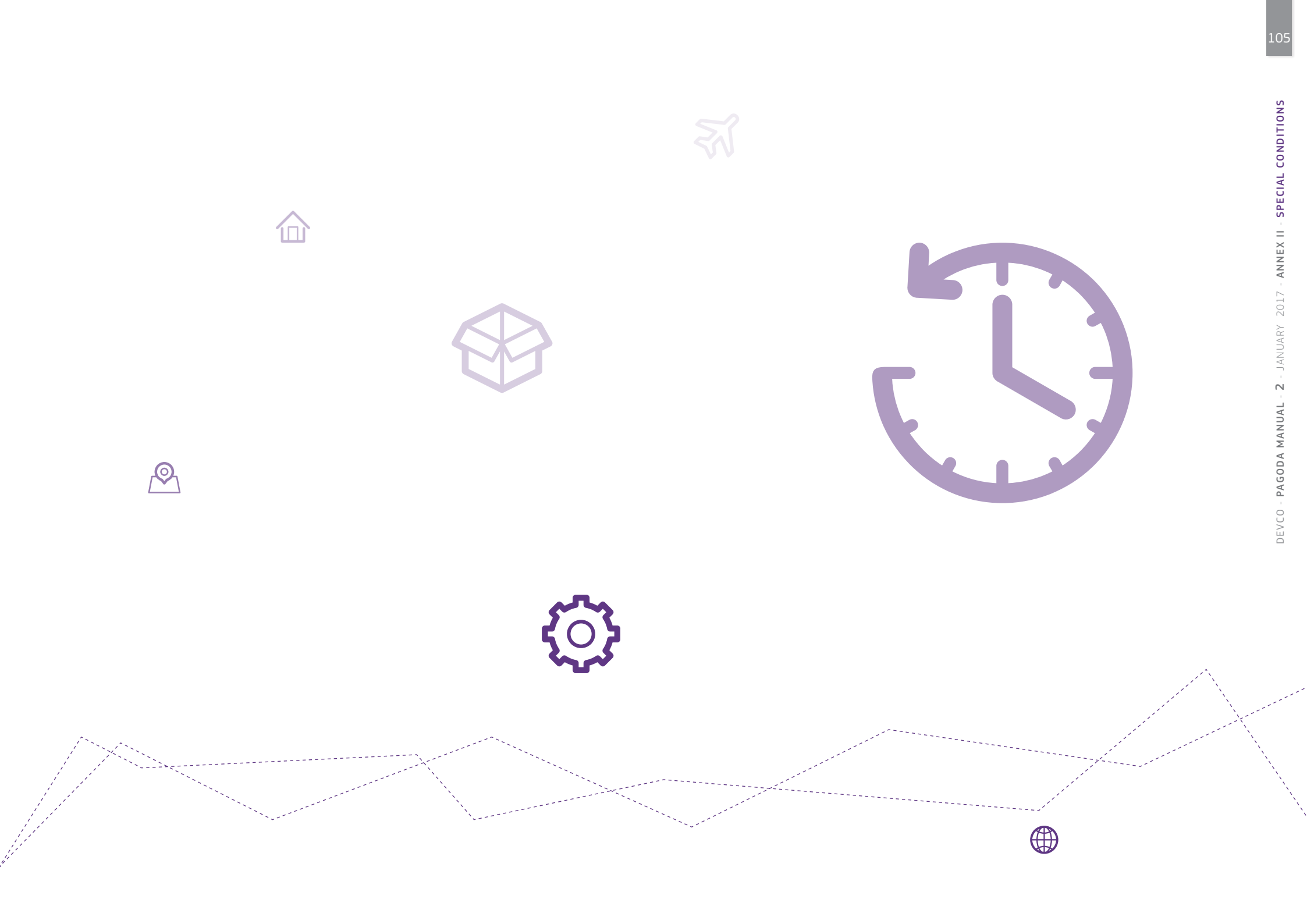
In case there is not Co-delegation:

Done in <specify the place> in three originals in the English language, two for the Contracting Authority and one for the Organisation.

In case of Co-delegation Agreements, and the Organisation does not sign on behalf of the Co-delegatees:

Done in <specify the place> in <specify> originals in the English language, two for the Contracting Authority, one for the Organisation and one for each Co-delegatee.







PAGODA Special Conditions - Pillar Assessed (PA) Grant Agreement

Text of the Article

Interpretation/ Guidelines on application

Article 1 - Purpose

- 1.1 The purpose of this Agreement is the award of a financial contribution by the Contracting Authority to finance the implementation of the action entitled: **<title of the Action>** (the 'Action') described in Annex I.

Please note that prior to the signature of a PA Grant Agreement, a Declaration of Honour concerning Exclusion situations will be required.

In cases of PA Grant Agreements involving Co-Beneficiaries and Affiliated Entities, a Declaration of Honour should also be required from such entities.

- 1.2 In the performance of the activities, the Organisation applies its own internal control and accounting systems as well as the rules and procedures for an independent external audit which have been positively assessed in the ex-ante pillars assessment, as well as any other Regulations and Rules, to the extent that these are not in conflict with the provisions of this Agreement.¹ In case the pillar assessment raised some reservations the Organisation shall comply with the ad hoc measures stated in *Article 7*.²

In order to be considered, an Organisation must have undergone a pillar assessment.

Although the Financial Regulation does not establish the obligation of a positive result of such assessment concerning Grants, DEVCO sets out that, the basic pillars of accounting, internal control and external audit must have been positively assessed or remedial measures must have been put in place to ensure equivalent quality. All Organisations that do not fulfil these requirements will sign the standard Grant contract for EU-external Action.

Unlike the Special Conditions for Delegation Agreements, the Special Conditions for PA Grants do not mention the procedures for procurement and (sub)Grants (i.e. financial support to third Parties) as the relevant rules to be followed are set forth in Annex II b) of the General Conditions.

- ¹ If the situation of a Co-Beneficiary differs from that of the Organisation add the required information in Article 7.
² Conclusions of the pillar assessment should be considered and required measures, if any, should be included in Article 7.

- 1.3 This Action [is / is not] an EU External Action. In case of an EU External Action add the applicable instrument/EDF: The Action is financed under **<instrument under the EU Budget or EDF>**.

- [1.4 This Agreement is subject to the provisions of **<reference to any relevant framework agreements between the European Commission and the Organisation and, if relevant, the Co-Beneficiaries>**.]

Article 2 - Implementation of the Action

2.1 This Agreement shall enter into force on the date when the last of the two Parties signs.

2.2 Implementation of the Action shall begin on:

<select one in agreement with the Organisation>

- [the day after the last Party signs.]
- <a later date. >
- [the first day of the month following the date on which the first pre-financing is paid by the Contracting Authority.]
- < exceptionally and subject to conditions on retroactive eligibility as stipulated in the Practical Guide (PRAG), a date preceding the signature of the Agreement (specify the date)>.

2.3 The Implementation Period of the Agreement is <number of months>.

Article 3 - Financing the Action

3.1 The total eligible costs of the Action are estimated at [EUR or the accounting currency of the Organisation] ("Currency of the Agreement") <insert amount > as set out in Annex III. If the currency of the Agreement is not EUR insert which is estimated at <currency of the Agreement> <insert the amount corresponding to the amount of the EU Contribution in the currency of the Agreement at the Euro rate of the month of signature of this Agreement>.

The «Currency of the Agreement» may be either EUR or the accounting currency of the Organisation. The choice of the Organisation regarding the Currency of the Agreement should be respected.

Nonetheless, the maximum EU contribution should always be expressed in the Special Conditions in EUR as an insurmountable threshold.

3.2 The Contracting Authority undertakes to finance a maximum amount of EUR <..... >. This contribution is further limited to <enter applicable percentage³> of the total eligible cost of the Action.

3. In case of direct award, when the Action under this Agreement is part of a bigger project or programme of the Organisation for which the total final budget is not known at the time of the signature of this Agreement, the percentage may be up to 100% if the Contracting Authority has the assurance of the existence of co-financing.

3.3 The final amount of the Contracting Authority's contribution shall be determined in accordance with **Articles 18, 19, 20 and 23** of Annex II and **Article 3** of Annex II b).

- 3.4 Pursuant to **Article 18** of Annex II, eligible indirect costs shall be declared on the basis of a flat-rate of **<enter percentage, maximum 7 % >** of the final amount of direct eligible costs to be reimbursed by the Contracting Authority. The final amount of direct eligible costs of the Action is established in accordance with **Article 18**.

If a contingency reserve is foreseen, insert:

- [3.5 A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5 % of the eligible expenditure may be included in Annex III, to allow for adjustments necessary in the light of unforeseeable changes of circumstances on the ground. It can be used only with the prior written authorisation of the Contracting Authority, upon a duly justified request from the Organisation.]

A reserve for unforeseeable contingencies and/or exchange rate fluctuations not exceeding 5 % of the direct eligible costs may be included in the budget for EU External Actions given the specificity and the higher level of unpredictability of External Actions.

The contingency reserve should only be included in the initial total budget, and not budgeted in the requests for pre-financing.

Note that the use of the contingency reserve is subject to the prior written approval of the Contracting Authority, who will make an evaluation and take a decision on a case by case basis. The reserve is used to increase the total amount available and can be distributed in the different budget headings and items. An amendment in accordance to *Article 11* has to be issued if the 25% threshold is exceeded or where the basic purpose of the Action is affected.

Exchange rate fluctuation

This case would just be one of the possible reasons justifying the use of the contingency reserve, for which the Organisation is not responsible and has already adopted all the possible risk mitigating measures according to the best practices in the sector.

If the decision is to allow the use of contingencies, these will not finance an “exchange rate difference” per se. They will finance eligible costs which have increased compared to the original estimate (because of the currency exchange). Therefore, the funds will be distributed to the concerned eligible costs heading(s) of the Budget.



Article 4 - Reporting and payment arrangements

4.1 Payments shall be made in accordance with *Article 19* of Annex II.

< For EU External Actions and CFSP insert The agreed pre-financing rate is <....>%⁴>

Initial pre-financing instalment: <Currency of the Agreement> < value>

Further pre-financing instalment(s): <Currency of the Agreement > <amount > following the end of the <1st, 2nd, etc. reporting period, from date to date >⁵; (subject to the provisions of Annex II).

For EU External Actions and CFSP, the further pre-financing instalments should be indicated as one global amount and not broken down per payment. The actual instalments will be based on the updated forecast for the next reporting period. Where the Implementation Period is 12 months or less or where the EU contribution is EUR 100.000 or less, further pre-financing instalments should not be included.

Forecast balance of the final amount of the contribution, if any (subject to the provisions of Annex II):

<Currency of the Agreement> <amount>.

Where the Currency of the Agreement is not EUR insert:

The sum of the payments in the accounting currency of the Organisation shall never exceed the total EU Contribution in EUR.

⁴ The Parties have to agree on a pre-financing rate (X%). The determination of the amount of the pre-financing instalments corresponds to X% of the part of the forecast budget for the following reporting period of the Action which is being financed by the EU (excluding not authorised contingencies).

⁵ For EU External Actions and CFSP, by default, the reporting period is every 12 months as from the commencement of the Implementation Period.

It is understood that the Organisation and the Commission will agree on the pre-financing rate referred to in *Article 4.1* of the Special Conditions duly taking into account the financing needs of the Organisation in accordance with the project implementation schedule and the EU budget availability.

The Special Conditions may include terms allowing the reporting period to be adjusted.

The amount of the first pre-financing corresponds to up to 100% of the EU's (in Multi-Donor Actions: proportional) share of the forecast budget for the first 12-month period of the Action (excluding contingencies, if any).

The rest of the EU contribution should be registered in this Article as one global amount, classified as «Further Pre-financing Instalments».

Each further instalment of pre-financing, the amount can be released by the EU as soon as the actual costs incurred and the legal commitments represent at least 70% of the immediately preceding instalment (and 100% of the earlier ones). The Organisation may submit a request for further pre-financing payment before the end of the reporting period, when the part of the costs actually committed which is financed by the Contracting Authority is more than 70 % of the previous payments. In this case, the following reporting period starts anew from the end date of the period covered by this payment request.

No adjustments of figures are required (unless there is an amendment to the Budget), only the final payment may require re-calculation.

By default, interest on pre-financing is not due. Should the Organisation have the obligation to pay interest, in accordance with its Regulations and Rules (namely, to ensure equal treatment between donors), the conditions for the payment of such interest should be introduced in the Special Conditions.

The Framework Agreements can foresee specific provision regarding reporting and payment for each Organisation. Please check them. For Actions under EC-UN FAFA, due its specific nature, the minimum threshold of each pre-financing is 80%. If no special provisions are applicable, the threshold of pre-financing is from 0 to 100%.

The payment requests (including for the balance) and payments will be made in the «Currency of the Agreement» stated in art. 3.1 and 4.2 of the Special Conditions (it may be either EUR or the accounting currency of the Organisation).

Nonetheless, the maximum EU contribution should always be expressed in the Special Conditions in EUR as an insurmountable threshold.

A pre-financing rate of 100% has been agreed with the UN Organisations and with ADA, AECID, AFD, BTC, GIZ, KFW, PROPARCO, SIDA, MAECI-DGCS and LuxDev (agreed at the 12th EU-UN FAFA Working Group meeting and in Section III, *Article 3.1* of the Framework Arrangement between the EC and MS Agencies) if so requested.

- 4.2 For contributions of more than EUR 5.000.000, For EU External Actions and CFSP add: [a further pre-financing payment may be made only if the part financed by the Contracting Authority of the eligible costs approved is at least equal to the total amount of all the previous payments excluding the last one.] For Internal Policies, if a pre-financing is paid and if the reporting periods exceed eighteen month, add: [in addition to the reporting requirements set out in Article 3 of Annex II, the Organisation shall inform the Contracting Authority by <31 December> <30 November> each year about the cumulative expenditure incurred by the Organisation from the starting date of the Action specified in *Article 2.2*.]

For EU External Actions and for Grants of more than EUR 5 000 000, there is an additional condition (beyond the 70% rule) to be respected to be able to make a further pre-financing payment: the part of the total amount of eligible costs approved which is financed by the Contracting Authority must be at least equal to the total amount of all the previous payments except the last one. Therefore in order to make a further pre-financing payment, all the previous payments, except the last one, must be matched by an equivalent amount of eligible costs approved by the Contracting Authority. The last one can still be (partially) open (i.e. not entirely backed by eligible costs).

Insert, if needed:

- 4.3 For specific reporting requirements: <Specify the applicable reporting requirements and payment schedules/length of reporting period, etc.>



Article 5 — Communication language and contacts

- 5.1 All communications to the Contracting Authority in connection with the Agreement, including reports referred to in *Article 3* of Annex II, shall be in **<specify the language⁶>**. If requested by the Contracting Authority they shall be accompanied by a translation or a summary in English or French where the language of the Agreement is not English or French.

6. EN, FR, ES or PT.

- 5.2 Any communication relating to the Agreement shall be in writing, shall state the number and/or title of the Action, and shall use the following addresses below.

- 5.3 Any communication relating to the Agreement, including payment requests and attached reports, and requests for changes to bank account arrangements shall be sent to:

For the Contracting Authority

[Option 1: where the Contracting Authority is the European Commission:

European Commission

<Directorate-General for insert responsible DG>

For the attention of **<address of the finance unit/section>**

Copies of the documents referred to above, and correspondence of any other nature, shall be sent to:

European Commission

< Directorate-General for **insert responsible DG**>

For the attention of **<address of the management unit/section>**

[Option 2: where the Contracting Authority is not the European Commission:

<address of the Contracting Authority's management department>]

[A copy of the reports referred to in Article 3 of Annex II and the reports, publications, press releases and updates relevant to the Action referred to in Article 8.6 of the General Conditions shall be sent to **<insert address>**]

For the Organisation

<address of the Organisation for correspondence>

- 5.4 Ordinary mail shall be deemed to have been received on the date on which it is officially registered at the address referred to above.

- 5.5 The contact point within the Organisation which shall have the appropriate powers to cooperate directly with the European Anti-Fraud Office (OLAF) in order to facilitate the latter's operational activities shall be: **<complete OLAF contact point within the Organisation>**

Article 5.1 does not imply the obligation to provide English or French translations where the other language has been defined as the language of the agreement.

Article 6 - Annexes

- 6.1 The following documents are annexed to these Special Conditions and form an integral part of the Agreement:

Annex I: Description of the Action (including the Logical Framework of the Project⁷ and – where applicable – the Concept Note)

Annex II: General Conditions for PA Grant or Delegation Agreements (Part II on Delegation Agreements does not apply)

[Annex II.b: Provisions applicable only to calls for proposals and other specific circumstances]

Annex III: Budget for the Action

Annex IV: Financial identification form⁸

Annex V: Standard request for payment

Annex VI: Communication and Visibility Plan⁹

Annex VII: Exclusion Situations for Pillar Assessed Grants

⁷ Indicative Results Indicators measuring Outputs and Outcomes as determined by the nature of the Action, have to be included in Annex I attached to the Agreement.

⁸ Where payment is to be made to a bank account which is already known to the Contracting Authority, the Organisation may provide a copy of the relevant financial identification form: http://ec.europa.eu/budget/contracts_grants/info_contracts/financial_id/financial_id_en.cfm
If required, the Organisation shall provide a copy of the Legal Entity File: http://ec.europa.eu/budget/contracts_grants/info_contracts/legal_entities/legal_entities_en.cfm

⁹ The Communication and Visibility plan describes the measures to acknowledge that the Action receives EU funding.

Annex I – Description of the Action

This Annex is a vital document within the regime of the PAGODA template. It should be comprehensively filled in. It should comprise, inter alia, the following elements:

1. Background
2. Relevance of the Action
3. Objectives (overall objectives and indicators outputs)
4. Activities
5. Methodology
6. Indicative Action Plan
7. Implementation Arrangements
8. Leverage effect
9. Sustainability
10. Logical Framework
11. General overview on visibility and communication

When the Organisation applies for the EU Grant through calls for proposals, it needs to use the project proposal templates provided for all applicant for a given call.

There is no obligation to use a specific template for Annex I. The Organisation can use its own format or base it on an existing document (agreed with the Government and/or other donors), provided that it includes the referred elements and the reporting requirements.

There is no obligation to use any specific form of Logical Framework of the Action (only the elements constituting it are mandatory) but, as an example, an English version of the standard Logical Framework of the Action template is available at the end of this Manual.

When the Organisation is awarded a Grant directly (i.e. not through a call for proposals), the project proposal (Annexes I & III of the Agreement) can be developed based on the Organisation's own templates. The Annex III/Budget should reflect the structure normally used by the Organisation in its own accounting system. It is not advisable to impose models which do not reflect this structure (for instance, Annex III of the EU Grant Contract). The advantages of reflecting the budget structure of the Organisation include more robust financial reporting and audit trail showing the link between the financial report and the underlying accounting methods.

Annex III – Budget

The Budget should describe the financial implications of the information included in Annex I - Description of the Action.

Annex III should be expressed in the currency of the Organisation. It is not necessary to have a column with the conversion in EUR (that would be in any case only indicative).

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As there is no standard template for the budget (except where the International Organisation responds to a call for proposals), there is room for discussion on what constitutes a budget heading. In order to avoid disputes at a later point, this should be clarified between the Contracting Authority and the Organisation when a contract is being signed.

Clarifications on the budget should be sought by the Contracting Authority's services during the negotiation process in order to ensure a good understanding of the information contained in the document provided by the Organisation and to avoid any dispute at a later stage. This information should be used for the purpose of the reporting requirements. In particular, the structure of the budget for the action will determine to a great extent the structure of the financial reports to be provided by the Organisation.

In case the Agreement is the result of a call for proposals, the annexes will be based on the documents published with the relevant call (in particular Description of the Action and Budget).

6.2 In the event of a conflict between the present Special Conditions and any annex thereto, the provisions of the Special Conditions shall take precedence. In the event of a conflict between the provisions of Annex II [and whenever applicable including Annex II.b] and those of the other annexes, those of Annex II [and whenever applicable and Annex II.b] shall take precedence.

Article 7 - Other specific conditions applying to the Action

Optional if a derogation or supplement to some of the articles of the Annexes is needed.¹⁰

10. Any supplementary or derogation provisions not mentioned in this template shall be consulted with DG BUDG D1 and D2 for Internal Policies and with DG DEVCO R3 for external policies.

The introduction of additional supplementary provisions and derogations should be done *in consultation with DG DEVCO – R3*.

Some Organisations have agreed on standard contractual derogations and supplementary provisions reflected in the respective Framework Administrative Agreements/ Arrangements. Such provisions should be copied respectively in *Articles 7.1* and *7.2* of the contract.

The interpretative provisions provide relevant guidance regarding the application of the agreement (please check them in the Framework Administrative Agreements/ Arrangements of the respective Organisation). They should not be introduced in the individual contract.

> Supplementary Provisions

7.1 The General Conditions are supplemented by the following:

For costs of a project office:

7.1.x Where the implementation of the Action requires the setting up or the use of one or more project offices, the Organisation may declare as eligible direct costs the capitalised and operating costs of the structure if all the following conditions are fulfilled:

- a) They comply with the cost eligibility criteria referred to in Article 18.1 of the General Conditions;
- b) They fall within one of the following categories:
 - i) costs of staff, including administration and management staff, directly assigned to the operations of the project office. The tasks listed in the Description of the Action (Annex I), undertaken by staff assigned to the project office will be directly attributable to the implementation of the Action.
 - ii) travel and subsistence costs for staff and other persons directly assigned to the operations of the project office;
 - iii) depreciation costs, rental costs or lease of equipment and assets composing the project office.
 - iv) costs of maintenance and repair contracts specifically awarded for the operations of the project office;
 - v) costs of consumables and supplies specifically purchased for the operations of the project office;
 - vi) costs of IT and telecommunication services specifically purchased for the operations of the project office;
 - vii) costs of energy and water specifically supplied for the operations of the project office;
 - viii) costs of facility management contracts including security fees and insurance costs specifically awarded for the operations of the project office;
- c) The Organisation declares the eligible direct costs of the project office as actual costs or for staff costs on the basis of unit costs determined by the Organisation according to its usual accounting practice;
- d) The Organisation declares as eligible only the portion of the capitalised and operating costs of project office which corresponds to the duration of the Action and
 - i) the rate of actual use of project office for the purposes of the Action; or
 - ii) the rate of use of a project office for the purposes of the Action, determined by the Organisation on the basis of a simplified allocation method, provided that the allocation method is compliant with the Organisation's usual accounting and management practices, applied in a consistent manner regardless of the source of funding, and based on an objective, fair and reliable allocation key.

For clarifications on Project-offices, please refer to the explanation provided in the corresponding provision in Special Conditions Delegation Agreement - *Article 7.1.x*

If the Organisation implements the Action together with Co-Beneficiaries:

[7.1.x For the purpose of this Agreement, the following legal entities are considered Co-Beneficiaries:

<Full official name as mentioned in the LEF of any Co-Beneficiary(ies)>

[<Legal status (organisation)>]

[<Organisation official registration number>] <Full official address>

[VAT number, for VAT registered beneficiaries]

Repeat as many times as Co-Beneficiaries

If the Organisation implements the Action together with Affiliated Entities add:

[7.1.x For the purpose of this Agreement, the following legal entities are considered Affiliated Entities:

<name of the legal entity>, affiliated to <name of the Organisation or Co-Beneficiary>;

Repeat as many times as Affiliated Entities

Insert if needed, if financial support to third parties is part of the Action:

[7.1.x Financial support is one of the main purposes of the Action.]

[7.1.x Financial support is part of the Action and is limited to a maximum of 60 000 EUR per beneficiary.]

Insert if VAT, taxes, duties and charges are not eligible, i.e. in one of the following cases:

1. the basic act/financing agreement excludes their eligibility
2. for VAT, the activities supported through the contribution are engaged in by the Organisation as a Member State public authority (police, justice and public domain management);

[7.1.x <VAT/ taxes, duties and charges > are not eligible fo <specify the relevant activities> or
[all the activities described in Annex I].



In case of accepted costs system (ineligible taxes, in kind contributions, overheads exceeding 7 %...):

7.1.x The following non eligible costs may be considered part of the total accepted costs of the Action for the purpose of co-financing: < clarify the conditions and specificities of the relevant costs, such as, non eligible taxes, including VAT, indirect costs exceeding 7%, in kind-contributions etc.>

Unless the existence of the relevant costs has been recognized by the Contracting Authority ex ante, insert: The corresponding cost must be included separately in the budget and in the financial reports.

Only where relevant following a call for proposals, insert:

[The total accepted costs of the Action are estimated at <Currency of the Agreement>, <enter total of estimated eligible costs plus non eligible costs, etc.> as set out in Annex III. The Contracting Authority's contribution set out in **Article 3.2** is further limited to < enter applicable percentage >% of the total accepted costs.]

Accepted cost system

The PA Grant Agreement (either following a call for proposals or a direct award) can include the "accepted cost system" introducing a second percentage to be respected when determining EU funding.

This allows the acknowledgment of co-financing by the payment by the Organisation, or by the Co-Beneficiaries, of ineligible costs, provided that such costs are necessary, directly related to the Action and incurred during the implementation period.

Normal cases:

The typical cases are the payment of non-recoverable taxes, in-kind contributions or overheads exceeding 7%. The EU-contribution to the eligible costs may then be increased and the co-financing requirement will be fulfilled by the payment of such costs. To be able to do this, two (maximum) co-financing rates must be specified:

- one percentage applicable to eligible costs. This is used to calculate the actual amount of the EU-contribution as usual; and
- one percentage applicable to the total accepted costs (=total eligible costs + non - eligible costs). This is used to calculate the required amount of co-financing by the Beneficiaries. If the amount of co-financing does not reach the minimum percentage fixed in the PA Grant Agreement, then the EU-contribution will be reduced proportionately.

The ineligible costs in the Total Accepted Costs, have to be clearly identified in the Budget of the Action (Annex III), in a separate budget heading and the Organisation will have to report on them.

Please note that in the case of call for proposals the guidelines for applicants will specify the maximum rates. The rates that will be fixed in the PA Grant Agreement will depend on the contribution asked by the Organisation. The final amount of the EU contribution will be subject to the maximum amount laid down in the PA Grant Agreement, and to the co-financing rates applied to the final costs (that are only known at the time of the approval of the final report).

Despite not being clear in the template, the Special Conditions should be completed as follows

7.1.x The following non eligible costs may be considered part of the total accepted costs of the Action for the purpose of co-financing: < clarify the conditions and specificities of the relevant costs, such as, non eligible taxes, including VAT, indirect costs exceeding 7%, in kind-contributions etc.>

Insert: The corresponding cost must be included separately in the budget and in the financial reports.

Insert: The total expected costs of the Action are estimated at <Currency of the Agreement>, <enter total of estimated eligible costs plus non eligible costs, etc.> III. The Contracting Authority's contribution set out in Article 3.2 is further limited to < enter applicable percentage >% of the total accepted costs.]

Cases with ex-ante approval

In some specific cases, the Commission may acknowledge ex ante the existence of non-eligible costs that are accepted for the purposes of co-financing. Such ex-ante cases should be duly justified and the proof included in a request for exception to be encoded in CRIS (which will remain available for possible audits or controls). As the costs have been accepted ex-ante, the co-financing of the Action (taking the form of accepted costs) should be mentioned in the Budget of the Action, but there is no need of including separately the corresponding accepted costs in the budget or in the financial reports. The Special Conditions should then be completed as follows:

7.1.x The following non eligible costs may be considered part of the total accepted costs of the Action for the purpose of co-financing: < clarify the conditions and specificities of the relevant costs, such as, non eligible taxes, including VAT, indirect costs exceeding 7%, in kind-contributions etc.>

A concrete case of ex-ante approval is the case of indirect costs higher than 7% (for instance several UN Organisations where the indirect costs are 8% as approved by their Governing Bodies) and the Organisation accepts a 7% on the EU Contributions. The difference of 1% can be considered as accepted costs. This should be documented ex-ante, and an exception encoded in CRIS. It has been agreed to include in the Special Conditions the following wording:

7.1.x For the purposes of *Article 24.2* on rules of nationality and origin, the Parties agree that Indirect costs incurred by the Organisation are higher than 7% and agree on the existence of co-financing for the purposes of *Article 24.2* on rules of nationality and origin. As the proof of such co-financing has been provided ex-ante there is no reporting requirement on these costs.

> Derogation Provisions

7.2 The following derogations from Annex II shall apply:

If the objective of the Action is to reinforce the financial capacity of the Organisation or to generate an income to ensure its sustainability beyond the end of this Agreement, insert:

[7.2.x By derogation from *Article 23.4* of Annex II, the no-profit rule shall not apply to:]<choose > [actions the objective of which is the reinforcement of the financial capacity of the Organisation] or [actions which generate an income to ensure their continuity beyond the end of this Agreement]

For EDF, only where the Agreement implements a financing agreement concluded following a 2013 or earlier template:

[7.2.x The initial pre-financing payment shall be made within 45 days of receipt by the Contracting Authority of the signed Agreement.]

For EDF, only where the Agreement implements a financing agreement concluded following a 2014 or later template:

[7.2.x The initial pre-financing payment shall be made within 60 days of receipt by the Contracting Authority of the signed Agreement.]

If needed in case the Implementation Period starts later than the entry into force of the Agreement:

[7.2.x By derogation from *Article 19.1*, first pre-financing instalment will be paid by <insert date>.]

Example Logical Framework of the Action

The Logical Framework of the Action will evolve during the lifetime of the project: new lines will be added for listing the activities as well as new columns for intermediary targets (milestones) when it is relevant and for reporting purpose on the achievement of results as measured by indicators.

	Intervention logic	Indicators	Valeurs de référence (incl. reference year)	Targets (incl. reference year)	Sources and means of verification	Assumptions
Overall objective: Impact	The broader, long-term change which will stem from the project and a number of interventions by other partners.	Measure the long-term change to which the project contributes. To be presented disaggregated by gender. It is normally not appropriate for the project itself to try and collect this information.	Ideally, to be drawn from the partner's strategy	Ideally, to be drawn from the partner's strategy	To be drawn from the partner's strategy.	
Specific objective(s): Outcome(s)	The direct effects of the project which will be obtained at medium term and which tend to focus on the changes in behaviour resulting from project	Measure the change in factors determining the outcome(s). To be presented disaggregated by gender	The starting point or current value of the indicators.	The intended value of the indicators.	Sources of information and methods used to collect and report (including who and when/how frequently).	Factors outside project management's control that may impact on the outcome-impact linkage.
Outputs	The direct/tangible outputs (infrastructure, goods and services) delivered by the project.	Measure the degree of delivery of the outputs. To be presented disaggregated by gender.	Idem as above for the corresponding indicators.	Idem as above for the corresponding indicators.	Idem as above for the corresponding indicator.	Factors outside project management's control that may impact on the output-outcome linkage.



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