European Commission

Commission

European Commission

Directorate General for International Cooperation and Development

DEVCO COMPANION TO FINANCIAL AND CONTRACTUAL PROCEDURES

applicable to development and cooperation financed from the general budget of the EU and from the 11th EDF

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3. Management Modes, Co-financing, Aid Effectiveness, Delegated Cooperation, Funding of Partner Countries and Cooperation with Other Special Entities

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3.1. A. Financial Part

3.1.1. Management modes in EU Public Finances

3.1.1.1. Introduction: implementation modalities, types of financing, management modes

EU policies implemented by way of expenditure, such as Development, Neighbourhood and Cooperation policies, are realised through actions each of which can be described in terms of its implementation modalities. An **implementation modality** is a combination of two elements: type of financing and management mode.

The **type of financing** captures the nature of the legal relationship between the EU providing financing, on the one hand, and the final recipient generating results, on the other hand. The most commonly used types of financing, regulated in the Financial Regulation, are:

- budget support (i.e. payments to the treasury of a partner country in exchange for achievement of results on the basis of indicators; Article 186 FR);

- grants (i.e. financial contributions to an action or operation of a beneficiary; Articles 121-137 and 192 FR);

- public procurement (i.e. purchases of supplies or services and the execution of works; Articles 101-120 and 190-191 FR); and

- financial instruments (i.e. equity or quasi-equity, loans, guarantees or other risk-sharing instruments; Articles 139-140 FR).

Management mode is the term to describe the legal (contractual or legislative) arrangement through which funds are channelled to the final recipients. The question is whether the Commission is the party of the contract with that final recipient, or whether the final recipient receives EU funds through a contract concluded with an intermediary to which the tasks of selecting the final recipients and managing the resulting contracts (so-called budget-implementation tasks) have been entrusted by the Commission. The former case where the Commission (including acting through the EU Delegation or an executive agency of the EU) contracts with the final recipient is called direct management; the latter case is called indirect management. The intermediaries (called delegatees or entrusted entities) can be:

(a) the partner country or an entity designated by it;

(b) an agency of a Member State or an EFTA country (Iceland, Liechtenstein, Norway, Switzerland) or, exceptionally, of a third donor country;

(c) an international organisation;

(d) the European Investment Bank and the European Investment Fund; or

(e) an EU specialised (traditional/regulatory, hence not executive) agency.

The delegatee is only allowed to channel EU funds to final recipients by way of grants, public procurement or financial instruments; budget support may only be implemented in direct management. The delegatee either uses the EU's rules (PRAG for grants and public procurement) or follows its own rules if they were considered to be equivalent in the ex-ante check known as pillar assessment (see dedicated section below).

The above explanations result in the following matrix of implementation modalities:

MOST COMMONLY[1] USED IMPLEMENTATION MODALITIES			
		Management Mode	
		Direct Management	Indirect Management
Type of Financing	Budget Support	✓	–
	Grants	✓[2]	✓
	Public Procurement	✓	✓
	Financial Instruments	–[3]	✓

[1] There are more types of financing under direct management foreseen in the Financial Regulation (e.g. prizes – Article 138 FR, non-grants – Article 121(2) FR). Further types of financing under direct management, specific for external action, are foreseen in Article 6(1) CIR and 35 EDF BF FR.

[2] Including the possibility for the grant beneficiary to (1) sub-grant (i.e. provide financial support to third parties) and (2) procure inputs. Furthermore, staff costs for programme implementation are typically eligible costs if the beneficiary respects its own applicable social and tax legislation.

[3] Direct management of financial instruments is legally possible, but not used in Development, Neighbourhood and Cooperation policies.

The combination of the relevant implementation modalities with the types of entities that are eligible for indirect management and that are listed above can be shown in the following table. The table does not include procurement under direct management, but procurement contracts may be awarded to the special entities from time to time in accordance with the applicable procurement procedures.

MANAGEMENT MODES WITH REGARD TO PARTNER COUNTRIES[1] AND SPECIAL ENTITIES[2]	
INDIRECT (delegation of budget-implementation tasks)	**DIRECT[3] (grant – direct or call for proposals)**
Partner Countries, including autonomous Partner Countries' agencies or regional organisations of Partner Countries Template: Financing Agreement, possibly accompanied by Programme Estimates	**Partner Countries (autonomous Partner Countries' agencies and regional or local bodies of Partner Countries, national governments/ministries unless included in programme estimates[4])** Template: PRAG grant contract
Member States' and Third Donor Countries' Aid and Development Authorities (an implementation modality of Development Cooperation) Template: PAGoDA – Delegation Agreement	**Member States' and Third Donor Countries' Aid and Development Authorities (an implementation modality of Development Cooperation)** Template: PAGoDA – Pillar Assessed Grant PRAG grant contract for entities without pillar assessment
International Organisations Template: PAGoDA – Delegation Agreement Administration Agreement and Framework Agreement for the World Bank Group	**International Organisations** Template: PAGoDA – Pillar Assessed Grant Administration Agreement and Framework Agreement for the World Bank Group PRAG grant contract for entities without pillar assessment with special conditions for international organisations
European Investment Bank, European Investment Fund Template: PAGoDA –Delegation Agreement	**European Investment Bank, European Investment Fund** Template: PAGoDA Pillar Assessed Grant
EU Specialised Agencies Template: PAGoDA –Delegation Agreement	**EU Specialised Agencies** Template: PAGoDA – Pillar Assessed Grant

[1] Budget Support (always in direct management) is not considered in this table

[2] Special entities are, for the purpose of our policy, those that are, besides the partner countries, also eligible for indirect management, namely: (1) Aid and Development Authorities of Member States and EFTA countries (Iceland, Liechtenstein, Norway, Switzerland), (2) Aid and Development Authorities of third donor countries, (3) International Organisations (usually of global scope, including their agencies), (4) European Investment Bank and European Investment Fund, (5) EU Specialised Agencies (i.e. traditional or regulatory agencies).

[3] Procurement contracts, especially service contracts, may be awarded to the special entities in accordance with the applicable procurement procedures.

[4] For further information on grants to national governments of partner countries, see section 6.10.2 of the Practical Guide 2015.

If the intermediary (delegatee) is a Member State (acting through its managing authority) on the basis of EU legislation, the management mode is shared management. This management mode is used for Cross-Border Cooperation programmes under ENI and IPA II managed by DG NEAR.

3.1.1.2. Distinguishing between a grant in direct management and delegation of budget-implementation tasks in indirect management

While the Commission can engage in indirect management with the above entities, it can also award grants in direct management to any of them (either a direct award, according to the conditions set in the Article 190 RAP, or on the basis of a call for proposals).

The decision between a grant in direct management or delegation of budget-implementation tasks in indirect management is based on the nature of the action to be implemented and on the degree of discretion that the entity enjoys, but not on the nature of the entity.

When the activities performed to achieve the objectives of the action are carried out by the Commission's contract partner, the contract with that partner should take the form of a grant under direct management (direct grant subject to prior approval or event to be reported). Such activities are then typically carried out by the partner's staff. This does not exclude that some inputs are obtained by way of procurement identified in the grant contract. Also, on conditions of compliance with the rules on financial support to third parties (sub-granting), funds may be channelled further by the grant beneficiary, but the grant contract excludes the Commission's contract party's margin of discretion by stipulating the conditions for this financial support.

Where the activities characteristic of and necessary for achieving the policy objectives of the action are carried out by third parties funded by the Commission's contract partner and whose task is to select such third parties and conclude, implement, enforce and monitor these contracts with them under its responsibility and with a large margin of discretion, the contract with that partner should take the form of a delegation agreement under indirect management. The tasks of the delegatee are hence similar to those of the Commission under direct management.

In a grant, the funds to be redistributed by procurement or financial support to third parties have to be clearly described in the budget. For financial support to third parties, further information required by Article 210 RAP has to be provided in the grant contract. In indirect management, by contrast, the margin of discretion of the delegatee may go as far that it is free to choose any of its procedures assessed in advance (see section on pillar assessment) to distribute the funds further. In practice, this margin may however be limited in the description of the action and/or in the logical framework in order to provide the necessary precision.

In reality, some actions can appear having both characteristics because the Commission's partners do not distinguish between a grant and indirect management. In such a case, the action should be qualified as grant or delegation of budget-implementation tasks on the basis of a “centre of gravity” principle: the core of the activities carried out by the partner should determine the nature of the action as a whole. The core of the activities should be determined with regard to the specific competence of the partner, the contribution of the grant and indirect management parts to achieving the policy objectives and/or the financial allocations to them. In other words, in case of a mixed action a decision must be taken on whether the action will be either entirely implemented under a delegation agreement of a PA grant agreement.

However, where the action to be implemented by a partner country includes budget implementation tasks, a financing agreement will be concluded in all cases in order to define the level of control and the role of partner country as contracting authority. A grant will however be awarded in accordance with PRAG to governments or agencies of partner countries (using the PRAG grant contract template) where the activities to be implemented do not include budget implementation tasks.

3.1.1.3. Further details of indirect management

Being the delegatee implies carrying out the following budget-implementation tasks: managing and enforcing the contracts concluded (making payments, accepting or rejecting deliverables, enforcing the contract, carrying out checks and controls, recovering funds unduly paid), and also running the procurement and grant award procedures preceding the conclusion of such contracts, including the award and rejection decisions. Managing financial instruments is also a budget-implementation task. The scope of delegation of these tasks may vary, as is explained below. By contrast, policy choices are not budget-implementation tasks and may not be delegated (entrusted). This is why budget support as type of financing must be implemented in direct management. In practice, the FinDec&AAP/M have to contain sufficient details about the activity implemented in indirect management, so as to conclude that the policy choices about the basic parameters of the activity have been made by the Commission and are not delegated. The names of the entrusted entity (delegatee), the description of the objectives and of the entrusted tasks, as well as the amount are the minimum requirements have to be included in the FinDec&AAP/M.

The entrusted entities listed in section 3.1.1.1, which are the delegatees or entrusted entities of the Commission, may further entrust - sub-delegate - the budget-implementation tasks to another entity, this new entity is referred to as sub-delegatee (see section 3.1.1.4. below). In indirect management of financial instruments, financial intermediaries are another form of entities involved in implementation (see section 3.2.6. below).

The partner country (for example acting through its federal ministry) may also designate an entity responsible for the implementation according to the partner country's constitutional division of powers (for example state, as opposed to federal administration) or organisation of government (e.g. a specialised agency); this designated entity is not a sub-delegatee. In certain cases, a regional organisation of partner countries can be so designated (e.g. regional authorising officer under the EDF). If a delegation agreement is not concluded directly with the designated entity, e.g. the regional organisation, the partner country is bound to ensure respect of the obligations of the financing agreement by that entity.

Member States' agencies and international organisations may have non-profit organisations (NGOs) as sub-delegatees.

The delegation agreement must identify the sub-delegatee; if it is not known at the moment of its conclusion, the delegatee shall appoint it later with a prior written approval of the Commission. Only one level of sub-delegation is permitted.

Even if the Commission decides to entrust the implementation of an action to the above-mentioned entrusted entities (delegatees), it remains accountable to the European Parliament and to the Council for the proper use of the EU funds.

The scope of delegation of budget-implementation tasks to entrusted entities has an impact on the nature of work remaining to be carried out by the Commission. The more the Commission delegates to an entrusted entity (delegatee), the more the Commission's role focuses on the previous assessment of the entity's system (the 'pillar assessment', see below) and on the (ex-post) control of the delegated action, since the budget-implementation tasks are carried out in majority or in whole by the entrusted entity, in accordance with the agreed rules.

It is important to remember that being able to delegate more tasks to more actors does not result in less responsibility for the Commission. It only modifies the nature of this responsibility, which changes from the actual implementation of an action to the control and monitoring of the tasks implemented by the entrusted entity (delegatee). It also creates new requirements that the Commission must impose on the entrusted entity (visibility, reporting, publication of final beneficiaries, etc.).

The rules on the procedures and systems to be used by the entrusted entity (e.g. Budget/EDF procurement and grant rules) are set out in the Financial Regulations (Budget and EDF). An ex ante assessment (“pillar assessment”) by the Commission is required to ensure that the rules, procedures and systems comply with international or Financial Regulation standards and thus are equivalent to those applied by the Commission.

Finally, subject to the instructions given by the responsible authorising officer, the Commission will monitor the management of the entrusted tasks with a view to assessing the entity's efficiency and to providing constructive feedback. This monitoring (ROM) should be done at least once during the lifetime of the activities entrusted. Should any serious problems be detected, the Commission should take corrective measures including, where necessary, changing the management mode initially chosen for these activities and/or amending the agreement concluded with the entrusted entity.

What should the authorising officer responsible decide during the preparatory phase?

- In deciding how an action should be implemented, the Commission must choose the most appropriate aid delivery method (i.e. budget support, project modality) and management mode (direct or indirect, and modalities of indirect - i.e. indirect with whom and of what scope), having regard to the circumstances and specificities of the action. Note that, according to the Cotonou Agreement, under the EDF, indirect management with partner countries has traditionally been the preferred management mode. The finance and contract units and sections must be involved in this early phase as their support will be required at the design phase also.

- In line with the aid effectiveness documents (e.g. Paris Declaration, the EU Code of Conduct on Division of labour in Development Policy, etc.; see below 3.2.1.1), or ongoing joint programming processes in the country - this decision is usually discussed with the partner country and other donors and stakeholders in the relevant country and/or sector of intervention. This dialogue is a key to deciding the most appropriate management mode. The dialogue may include sharing previous assessments made by other donors on the systems used by the body from the partner country to which tasks might be delegated. Shared understanding is important; stakeholders may have similar sounding terminology which may not hold the same meaning for the Commission (e.g. 'assessment' of the systems/procedures, notion of 'grants', etc.)

- The Commission services (both operational and contractual) need to involve the partner countries and other donors as early as possible in the preparatory phase of an action and discuss with them matters such as the needs of the country, the objectives and expected results, the activities, and by whom and how projects are to be implemented. It is important to remember that partner countries are sovereign States and that the Commission's financial intervention in the field of Development and Neighbourhood policies is always on behalf of these countries and according to their needs.

- If indirect management with the partner country is chosen as the management mode, the next question to be decided by the responsible authorising officer will be the scope of delegation: partial with payments by the Commission, or full with programme estimates or pooling of funds (these categories are described below in section 3.2.2.3.C).

3.1.1.4. Sub-delegation by the entrusted entity/delegatee

Entrusted entities/delegatees may, if justified, further entrust/sub-delegate all or part of the budget-implementation tasks to another entity, particularly when this will have a positive impact on aid effectiveness. Sub-delegation is explicitly recognised by the Common Implementing Rules (Art.4(7)) and the Council Regulation (EU) No 2015/323 of 2 March 2015 on the financial regulation applicable to the 11th European Development Fund (11th EDF FR) and is possible under conditions equivalent to a delegation by the Commission. More specifically:

- the sub-delegatee is a public body (national - including partner countries- or international) or a private law body with a public service mission. Member State agencies, and international organisations may also entrust budget implementation tasks to non-profit organisations (NGOs) possessing the appropriate operational and financial capacity, under conditions equivalent to those applying to the Commission;

- the sub-delegatee has been subject to an ex-ante assessment performed by the entrusted entity, or by another donor, equivalent to the pillar assessment performed by the Commission on the entrusted entity, ensuring that sub-delegatee will implement the activity using rules, procedures and systems that comply with the relevant standards. This ex-ante assessment will not be necessary if the sub-delegatee has already been positively assessed by the Commission. If there is no equivalent ex-ante assessment, ex-ante control is required equivalent to that carried out by the Commission in indirect management with partner countries;

- the entrusted entity retains control and responsibility over the sub-delegated tasks in implementing the activity and ensures that the necessary ex-ante and ex-post controls are in place to guarantee the sound financial management of the EU resources.

- only one level of sub-delegation is permitted. If the sub-delegatee is the partner country, it may designate the body in accordance with its constitutional or administrative division of powers which will carry out the sub-delegated tasks; this case is not a second level of sub-delegation. The entrusted entity should then exercise supervision over such body; alternatively, the partner country can exercise such supervision but shall in such case take full financial responsibility.

- The pillar assessment contains a pillar devoted to sub-delegation which examines the rules, procedures and systems of candidate entrusted entities applicable in situations in which they further entrust/sub-delegate budget-implementation tasks to other entities (sub-delegatees).

3.1.1.5. Pillar Assessment

a) Pillar assessment for indirect management

The Financial Regulation requires that the candidate entity to be entrusted with budget-implementation tasks (the candidate delegatee) demonstrates a level of financial management and protection of the EU financial interests equivalent to that of the Commission. This is verified by carrying out an ex-ante assessment, a pillar assessment of the entity. Pillars are the broad areas covered by this assessment and include (1) internal control, (2) accounting and (3) independent external audit. Moreover, the assessment must also include at least one of the following, so that the entity can be entrusted with the corresponding budget-implementation tasks: (4) procedures and rules for grants, (5) for procurement, (6) for financial instruments, as well as (7) a specific pillar for sub-delegation.

DEVCO's Management has decided that pillar assessments launched within the responsibility of DEVCO Authorising Officer, must be carried out by a professional auditor and in accordance with the terms of reference established by DEVCO.R2 “Audit and Control” which is the service responsible for these assessments. The auditor must be an independent external auditor who is a registered member of a national accounting or auditing body or institution, which in turn is member of the International Federation of Accountants (IFAC), and who is certified to perform audits.

The auditor is contracted to assess the systems put into place and the controls, rules and procedures applied by the entity for each pillar against the criteria set by the Commission. The **objective** of this pillar assessment is to enable the authorising officer to confirm that the entity fulfils the requirements set out in points (a) to (d) of the first subparagraph of Article 60(2) of the Financial Regulation (applies both to Budget and the EDF) , i.e. as to whether the candidate entrusted entity:

- has set up and ensures the functioning in all material respects of an effective and efficient **internal control system** and in accordance with the criteria set by the Commission; and

- uses an **accounting system** that provides in all material respects accurate, complete and reliable information in a timely manner and in accordance with the criteria set by the Commission; and

- is subject to **an independent external audit**, required to be performed in all material respects in accordance with internationally accepted auditing standards by an audit service functionally independent of the entity concerned and in accordance with the criteria set by the Commission; and

- applies **appropriate rules and procedures** in all material respects **for** providing financing from EU funds through **grants** and in accordance with the criteria set by the Commission; and

- applies **appropriate rules and procedures** in all material respects **for** providing financing from EU funds through **procurement** and in accordance with the criteria set by the Commission; and

- applies **appropriate rules and procedures** in all material respects **for** providing financing from EU funds through **financial instruments** and in accordance with the criteria set by the Commission

- has taken measures in all material respects which ensure that **Sub-Delegatees** and **Financial Intermediaries** to which the entity sub-delegates budget-implementation tasks, will implement EU-funded actions with systems and procedures that comply with international standards and with the criteria set by the Commission.

The pillar assessment will result in an opinion of the auditor on the equivalence of the rules, procedures and systems of the candidate entrusted entity with the benchmarks which will allow the authorising officer responsible, to conclude on the opportunity to entrust the tasks to that organisation.

If the rules, procedures and systems of the entity are equivalent to those of the Commission, the entity may use its own rules, procedure and systems, subject to the specific obligations agreed in the delegation agreement.

Where cases of non-equivalence are found, the auditor may issue a series of recommendations to remedy the non-equivalence. If the authorising officer deems that the deficiencies are serious, no delegation is possible until remedy is provided. Otherwise, recommendations can be followed up on by either changes in the rules, procedures and systems of the candidate entrusted entity or by remedial clauses that will be inserted into the delegation agreement. This demonstrates the need to identify the candidate entrusted entity as soon as possible in order to trigger the pillar assessment on time, if necessary.

The necessity for undergoing a new pillar assessment pursuant to the new Financial Regulation No 966/2012 is only relevant for signing delegation agreements with an international organisation. The Commission may sign Delegation Agreements with an International Organisation relying on the old pillar assessment based on the old Financial Regulation No 1605/2002, provided that the authorising officers by sub-delegation verify that the previous pillar assessment was positive, the cooperation problem-free and that the new pillar assessment has been launched at the time the FinDec&AAP/M is adopted. The pillar assessment is considered to be launched if a pillar assessment form completed, accepted without conditions and signed by the candidate entrusted entity has been sent to the Commission. The template Action Document and FinDec?AAp/M contain provisions for that purpose.

In case of financing decisions signed before 01/01/2014 delegation agreements with IOs may also be signed without the need to undergo a new pillar assessment provided that the international organisation has successfully passed the old pillar assessment.

All up-to-date information can be found here:

https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/audit/compliance-assessment/Pages/current-status-of-pillar-assessment.aspx

Member States', EFTA countries' and other third donor countries' agencies that passed the old pillar assessment based on the old Financial Regulation No 1605/2002 continue to be covered by this pillar assessment. Moreover, those which passed the grants pillar under the EDF, they may use their own grant rules now also for actions financed by the EU Budget. This may be authorised also for ongoing contracts by way of an amendment of the delegation agreement.

The pillar assessment of the EIB has been carried out for DG ECFIN and applies to the whole Commission. The delegation to the EIF is covered by the presumption of conformity until the new pillar assessment is completed. In case of indirect management with EU Specialised Agencies (regulatory or traditional agencies), a light ad-hoc assessment shall be carried out in accordance with the instructions contained in the section dedicated to them below. For the partner countries, the system of remedial measures, identified above, is in place to address the weaknesses identified at a general level.

Entities that have never been positively assessed before have to be successfully assessed before being entrusted any budget-implementation tasks. Annexes C6a to C6c contain all the relevant information on how an organisation shall request to undergo the pillar assessment. These annexes also explain the internal procedure between the receipt of a request from an organisation and the Commission Decision.

a) Pillar assessment to use the grant part of PAGoDA

PAGoDA, Pillar Assessed Grant or Delegation Agreement, is a template designed for entities having passed the pillar assessment. It contains a part to sign under Indirect Management (Delegation Agreement), and a part to sign when the organisation receives a grant (either through a direct award or following a call for proposals). PAGoDA and its annexes are published in the Companion as Annexes C5a-C5g and the equivalent for the World Bank are Annexes G3ma-G3md.

The pillar assessment is only required by the Financial Regulation when working under Indirect Management, but DEVCO has decided to use the grant part of the PAGoDA for those organisations that:

- Have gone through a pillar assessment, either under the old Financial Regulation or under the new one;
- Have been positively assessed (or remedial measures are possible) for accounting, internal control and audit. If these three first pillars were not positively assessed and remedial measures are not possible, the PRAG standard grant contract for EU-external actions should be used.

3.1.1.6. Further details on direct management

Where the Commission implements the action in direct management, all budget-implementation tasks are performed directly by its departments either at Headquarters or in EU Delegations (to that end, a sub-delegation has been granted to any Head of Delegation pursuant to Article 56(2) FR). The relevant EU service then becomes the Contracting Authority in charge of procedures and of signing and managing the contracts with contractors and grant beneficiaries and with the partner countries in case of budget support.

The Budget or EDF is also managed directly when the action is implemented by an executive agency which is an entity established in accordance with Council Regulation (EC) No 58/2003 (OJ L 11, 16.1.2003) with a view to being entrusted with certain budget-implementation tasks relating to the management of one or more programmes. These agencies are set up for a fixed period. Their location has to be at the seat of the Commission (Brussels or Luxembourg). In the area of Development and Neighbourhood policies, this concerns various types of mobility actions (e.g. exchanges and stays abroad of students or researchers) managed by the EAC Executive Agency.

Further, the following activities are carried out in direct management:

- support for debt relief[1]
- support for short-term fluctuations in export earnings[2];
- contracts concluded by the Commission for and on behalf of one or more ACP States and OCTs, in particular the conclusion and use of the framework contract for beneficiaries;
- specific contracts concluded under the framework contract with the Commission for audit and evaluation.
- resources reserved for expenditure linked to programming and implementation by the Commission.

3.1.1.7. Changing the management mode from indirect to direct or changing the degree of delegation during implementation

[1] Support for debt relief is governed by Articles 60 and 66 of the Cotonou Agreement.

[2] Support for short-term fluctuations in export earnings is governed by Articles 60, 61 and 68 of the Cotonou Agreement.

When the criteria and conditions for entrusting budget-implementation tasks defined in the Financial Regulations are no longer met, the Commission can unilaterally decide to manage the project centrally. (For the sake of completeness, it is also possible to exchange the failing delegatee for another one - see modification A.12 in section 7.1.7). The decision to re-centralise a project, i.e. to change from indirect to direct management, is considered to be a substantial modification (i.e. Commission adoption procedure) and technical amendment (information ex-post of the committee) (modification A.11 in section 7.1.7) unless it is considered non-substantial in older FinDec&AAP/M or unless direct management is expressly foreseen in the Action Document as the alternative option (section 5.4.1.7. of the AD template).

The General Conditions of the Financing Agreement provide for the suspension of the implementation of the agreement and changing the management mode (Annex C3b).

Under indirect management with the partner country, where Annex I of the Financing Agreement - the Technical and Administrative Provisions (TAPs) clearly fix the modalities of indirect management, the agreement will have to be amended. In the meantime, the action can still be implemented directly or suspended, in accordance with the decision of the Director, and in the light of the specificities of the case.

The Commission can also decide to gradually increase the level of delegation in the implementation of an action, for instance by allowing the delegation of payments for amounts below the programme estimate thresholds and then gradually increasing these amounts until the thresholds are reached, on the basis of a re-evaluation of the situation in the partner country. In such cases, the TAPs should provide for the thresholds for delegation of payments to be fixed in each programme estimate.

3.1.1.8. Shared management

Shared management is a management mode in which budget-implementation tasks are entrusted to Member States. Member States act through bodies responsible for the management and control of Union funds called managing authorities and may delegate some of their tasks to other bodies in accordance with sector-specific rules. About 80 % of the EU Budget is implemented in shared management, in particular in the Structural Funds and the Common Agricultural Policy.

In the area of Neighbourhood and Enlargement policies managed by DG NEAR, shared management is used for cross-border cooperation actions where cooperation projects of Member States and Neighbourhood and candidate and potential candidate countries are carried out. In such a case, certain funds of ENI/IPA II are managed together with the Structural Funds by the Member States (acting through managing authorities) for the benefit of the Neighbourhood or candidate or potential candidate countries.

3.1.2. Co-financing of actions by other partners

An action is always financed by the EU Budget or the EDF. However, other partners may co-finance the action together with the EU. These partners are essentially Member States or third donor countries, partner countries and international organisations. Private organisations, such as foundations and charities, could also provide co-financing.

Two types of co-financing should be distinguished: parallel and joint co-financing.

- Parallel co-financing: the action 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.
- Joint co-financing: the total cost of the action is divided between the co-financing partners and all the funds are pooled, with the result that the source of funding for a specific activity within the action cannot be identified (no traceability). Funds of the donors are hence not earmarked. As it is virtually impossible to apply each donor's rules and procedures, the donors agree on the common rules to be applied. A jointly co-financed action is known as multi-donor action.

If the fund-managing entity is a Member State's or third donor country's agency, or an international organisation, the application of common rules implies a flexibility of the EU rules to accept the fund-managing entity's ones: the equivalence of the rules, procedures and systems of the donor is assessed ex ante in the pillar assessment (see below). Further, the EU agrees that the fund-managing entity (under indirect management or as a grant beneficiary (for grants, where co-financing is provided) applies its own rules on nationality and origin provided that they are not narrower than the EU's. The rules on nationality and origin define which procurement tenderers and grant applicants and goods and materials purchased are eligible for funding. These rules are determined in the relevant basic act, i.e. Common Implementing Rules (EU Budget basic acts), Annex IV to the Cotonou Agreement (EDF - ACP States) and the Overseas Association Decision (EDF - OCTs)). Under the EDF, ACP States preferences stipulated in Article 26 of Annex IV to the Cotonou Agreement do not have to be applied by the fund-managing entity. By way of exception, the deadline for the fund-managing entity to conclude agreements with final recipient (so-called D+3) may be extended in multi-donor actions (EDF and Budget). Also, the loss of traceability implies that the EU rules on ex-post transparency on contractors and grant beneficiaries (i.e. publication of the recipients of EU funds) cannot be applied. Instead, those of the fund-managing entity can be accepted.

With a view to harmonising the terminology used in the legal framework, the term 'joint co-financing' will cover such terms as pool funds, basket funds, multi-donor funds/actions, active or passive co-financing with Member States and multi-donor trust funds, all of which are forms of co-financing.

Joint co-financing activities should be included in the joint annual reviews, the mid-term reviews and the end-of-term reviews.

3.1.2.1. Notional approach

The use of the notional approach allows the EU to jointly co-finance an action although some of the costs of this action are not eligible for EU funding.

Budget and EDF contributions are subject to a number of specific requirements regarding eligibility of costs which do not necessarily apply to the other donors pooling funds together under a jointly co-financed action. Since complying with these requirements would require a degree of traceability, it would be difficult to reconcile these requirements with the nature of jointly co-financed actions and would make it difficult for the Commission to take part in this type of actions.

However, it is possible for the EU to contribute to multi-donor actions using the notional approach. Under this approach, the EU cost eligibility requirements are met as long as the amount contributed by other donors is sufficient to cover the costs which are ineligible under EU rules.

For instance, if the EU finances 40 of a given project of total costs 100 under a basic act which does not permit the funding of taxes, and the managing entity estimates that it will use 5 of its funds to reimburse local taxes, the Commission is allowed to assume that this 5 (ineligible under EU rules) will be funded from the 60 contributed by other donors. Equally, if for instance the Commission finances 20 of the project of total costs 100 under the EDF and, say, 60 of the estimated expenditure is allocated to African, Caribbean and Pacific (ACP) States, the Commission is allowed to assume that all its contribution will go exclusively to ACP countries.

In this manner, the Commission can participate in jointly co-financed actions without actually earmarking its contribution (as such earmarking would be contrary to the very idea of joint co-financing).

While the notional approach is normally used to contribute to jointly co-financed, i.e. multi-donor actions, it needs to be applied carefully:

- Before deciding to participate in a jointly co-financed action, the responsible authorising officer needs to get a good understanding of the nature of the costs in the budget, whether such costs can be regarded as eligible under EU rules, the number and amount of contributions from other donors which can finance the non-eligible costs, etc. The amount contributed to multi-donor actions should be limited as to avoid the EU contribution exceeding eligible costs.

- The Commission services will then monitor the action through the financial and narrative reports. In case any substantial deviation is identified, such that the other donors' contributions may not cover the ineligible costs under EU rules, appropriate measures will be adopted (such as amending or terminating the delegation agreement).

- With each payment request, and at the end of the implementation period of the delegation agreement, the fund-managing entity will be requested to provide a declaration that ineligible costs for the EU contribution are covered by other donors' contributions. Such declaration shall be integrated into the financial report. If, at the end of the implementation period, an amount of ineligible costs cannot be covered by other donor's contributions, it implies that that there are not enough eligible costs to cover the EU contribution, which will then be reduced by such amount, as to only cover eligible costs.

- Indirect costs cannot be covered by this approach.

- The use of the notional approach is allowed even if no specific provision has been inserted in the special conditions of the delegation agreement concerned.

3.1.2.2. Priority of consumption

When the level of contributions from the different donors is not known or when the periods of implementation financed by the different donors are different, it is normal that EU contributions to multi-donor actions implemented via delegated cooperation state an absolute contribution without including a co-financing percentage. In such cases priority of consumption has to be assumed for 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 our delegation agreement with the fund-managing entity) are attributed in priority to the EU contribution, and not divided among the donors pro rata, as otherwise might be expected. In this way, the financial participation of the EU can come to an end more quickly.

Release of further pre-financing:

Requests for further pre-financing have to be accepted as long as 70% of the immediately preceding installment has been subject to legal commitment (and 100% of the previous ones). Whether there is a co-financing rate stated in the Special Conditions of the delegation agreement (option in old agreements only) or not, each further installment is released without regarding other donors' contributions[3]. No virtual percentages shall be used.

It is recommended to state in the delegation agreement the EU contribution installments for each 12 months period of activity. If such amounts have not been included, all payment requests should be met. The only existing limits are then the maximum amount of the EU contribution and the amount reserved for final payment. In either case it is assumed that EU resources are committed first.

Final payment:

At the end of the implementation period of the delegation agreement, the Commission will release the final payment under the assumption that the eligible funds that are first incurred are the EU ones. Therefore, as far as there are enough eligible costs to cover the EU contribution and there is assurance by the implementing entity that ineligible costs are covered by other donors' contribution (notional approach), the final payment shall be released without applying any virtual percentage.

In case the amounts incurred are less than the EU contribution, an amount equal to the outstanding not incurred amount shall be recovered.

Surplus and profit of the action will only be considered where the end of the implementation period of the delegation agreement coincides with the end of the action. In such cases the relevant agreements between donors will apply.

[3] As the contributions from other donors are not necessarily synchronized with the EU contribution installments, the co-financing rate is not used to release each installment. In case there is a co-financing rate, such rate will only be used after signature of the contract for pre-financing clearing and to determine the final payment.

In cases where the end of the action is later than the end of the implementation period of the agreement, and at the end of the action the implementing entity distributes unexpended funds to donors, the Commission will issue the corresponding recovery order for the amount determined by that implementing entity.

Note on clearing

In indirect management pre-financing is released based on legal commitments concluded by the implementing entity and without applying any co-financing rate. However, clearing is done based on incurred costs. In cases where a co-financing rate is stated in the Special Conditions (option in old agreements only) such co-financing rate shall be used for clearing.

3.1.3. Commission as fund-managing donor under a Transfer Agreement generating assigned revenue in the Budget and EDF

The possibility for the Commission to be the fund-managing donor under Delegated Cooperation is provided for in the Financial Regulations (Budget and 11th EDF). The co-financing donor may be an EU Member State (or its entity operating at national or federal level), or in exceptional and duly justified cases, any other donor country (including its public and semi-public agencies), international organisations or even a private entity. The notion of donor country should be assessed in the light of each specific action; a public body from a country beneficiary of EU development aid can act as a donor for a specific action in a different country.

Any action implemented by the Commission on the above basis will always be co-financed by other donors.

The financed activities must fit the Commission's programme priorities, as defined in the strategies and programming documents adopted.

Note that the receipt of funds from another donor is not a management mode (see section 3.3), but a solution to engage in Delegated Cooperation when the Commission is the fund-managing donor pooling within the Budget or the EDF these sources with those of other donors to co-finance an action. Once pooled, the funds will be disbursed through whatever management mode is chosen by the Commission in the corresponding FinDec&AAP/M. A share of the donor's funds will be used to finance the Commission's administrative costs.

For implementation purposes, such funds will be treated as external assigned revenue, in accordance with Article 21(2) FR and of the 11th EDF FR.

DG DEVCO has developed an assessment tool for the identification and formulation phases by which services involved in discussions regarding possible receipt and management of funds by the Commission will systematically use as soon as they have sufficient details about the projected agreements. On the basis of the Special Entity Assessment Sheet (general section and section on Transfer Agreements), filled in to the best of their knowledge, they will submit the option, as soon as it materialises and at the latest at QSG2, to receive and manage funds from other donors to the responsible Director for an approval in principle. Following that approval, the Special Entity Assessment Sheet will be further completed and will feed the project identification process, to form a part of the QSG 2 file. The reception of the other donors' funds will also be foreseen in the Action Document and the Financing Decision body and adopted in the FinDec&AAP/M.

The Special Entity Assessment Sheet essentially includes an assessment of the relevance and feasibility of the action for the EU, for the partner country or regional organisation and for the donor. It asks whether the relevant Delegated Cooperation contributes to the strengthening and rationalisation of a wider division of labour process, whether the delegated action corresponds to EU priorities in the partner country or region and whether the Commission has the capacity to implement the delegated action. With regard to the partner country or regional organisation, it asks whether the delegated action is aligned with its development strategy and is owned and led by the partner country or regional organisation and whether it agrees with the management mode of the action. It also asks about the efficiency gain and reduced transaction costs of the action. As regards the donor, the fiche asks about its objectives for transferring funds.

In the Transfer Agreement, the obligations of donors wishing to entrust funds will differ depending on the level of their involvement, i.e. whether the donors wish to be involved in regular activities (annual reviews, policy dialogue etc.), or whether they will be silent partners, entrusting the Commission with all the tasks of managing the action and expecting only to receive a copy of the annual progress report.

As regards the timing of the conclusion of the Transfer Agreement, it must be concluded after the adoption of the corresponding FinDec&AAP/M where the Commission officially accepts this co-financing and hence gives authority to the responsible authorising officer to sign the Transfer Agreement. Before the adoption of a FinDec&AAP/M, a confirmation of the donor's intention to provide the contribution should be obtained (letter of intent) and the Transfer Agreement should be signed by the donor (and only by the donor). The "letter of intent" is solely used for the preparation of the Transfer Agreement whilst it is necessary to wait for the signature of the Transfer Agreements by the donor for other purposes in order for the Transfer Agreement to enter into force. Following the entry into force of the Transfer Agreement, a debit note requesting the payment will be sent to the donor in accordance with the contractual provisions.

The Transfer Agreement has to be signed before the signature of the Financing Agreement.

The templates for a **transfer agreement** may be found at

Annex C1a : Special Entity Assessment Sheet

Annex C2a : Transfer Agreement: Special Conditions

Annex C2b : Transfer Agreement: General Conditions (Annex II)

The Commission will follow its own rules and procedures as regards programming, financing and implementation. These co-financed activities should be included in the joint annual reviews, the mid-term reviews and the end-of-term reviews.

Alternative solutions, where transfer of funds is neither possible nor appropriate, may also be explored, such as joint procurement procedures to be launched by the Commission and Member States together[4], or operations coordinated by the Commission, where each donor makes its payments via its own staff and preserves its own visibility, but the Commission designs the programme and coordinates its implementation.

3.1.4. EU Trust Fund - Commission as fund-managing donor subject to specific donor governance

Article 187 of the EU Budget Financial Regulation and of the 11th EDF FR enable the creation of EU Trust Funds. Such a trust fund is composed of pooled funds from the EU Budget or the EDF on the one hand, and from a contribution of one or more other donors which may be Member States, third donor countries or private donors.

An EU Trust Fund is established by a Commission decision subject to the opinion of the Comitology Committee set up under the basic act (financing instrument) that provides the EU contribution (Budget or EDF) to the EU Trust Fund. This decision determines the objectives, the duration and the rules for implementing the EU Trust Fund.

A thematic EU Trust Fund may only be implemented in direct management. A crisis and post-crisis EU Trust Fund may also be implemented in indirect management with Member States' and third donor countries' agencies, international organisations and partner countries.

The governance of the EU Trust Fund is ensured by a board chaired by the Commission and representing the other donors as voting members, as well as non-contributing Member States as observers.

All details on Trust Funds are provided in chapter 21.

3.2. B. Policy Part

3.2.1. Policy context

3.2.1.1. Principles of aid and development effectiveness

The European Union, along with its Member States, is actively engaged improving the effectiveness of aid and development more generally. It adheres to the commitments of successive High Level

[4] Article 104 FR and Article 125(c) RAP.

Forums on Aid Effectiveness (Paris x(2005), Accra x(2008) and Busan (2011)[5].

At the EU level, the European Consensus on Development (2006)[6] and the EU Code of Conduct on Complementarity and the Division of Labour in Development Policy (2007)[7] deal with aid effectiveness. As set out in the Commission communication "Agenda for Change"[8], the EU is committed to improving the impact of development assistance in order to speed up progress towards the internationally agreed Millennium Development Goals (MDGs).

These initiatives identify the following aid effectiveness principles:

a) *Ownership* -Partner countries exercise effective leadership over their development policies and strategies and coordinate development efforts. At the level of programming, ownership is ensured by taking utmost account of the partner countries' own national development strategies. At the level of implementation, ownership is expressed by the conclusion of the Financing Agreement with the partner country.

b) *Alignment* - Donors base their overall support on partner countries' national development strategies, institutions and procedures.

The use of the partner countries' institutions, rules, procedures and systems in financial implementation, even if partial, has the objective of enhancing the capacity of public finances management, in particular management of expenditure, in these countries (capacity building). This principle is reflected in the situations where partner countries manage EU funds, i.e. under indirect management with partner countries.

c) *Harmonisation* - Donors aim to be more harmonised, collectively effective and less burdensome, especially on those partner countries, such as fragile states, that have weak administrative capacities.

Harmonisation of donors can be achieved by the following mechanisms:

- Joint Programming: donors coordinate their actions at the stage of programming them and align their interventions on the national development plan. A substantial

[5] Find these documents at http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm and http://effectivecooperation.org/

[6] Joint declaration by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the development policy of the European Union entitled The European Consensus (OJ C 46, 24.2.2006).

[7] Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council" 15 May 2007 and Communication from the Commission to the Council and the European Parliament of 28 February 2007 entitled EU Code of Conduct on Division of Labour in Development Policy (COM(2007) 72 final not published in the OJ).

[8] Council conclusions 14 May 2012 and Communication from the Commission to the European Parliament, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 13 October 2011, "Increasing the impact of EU Development Policy: an Agenda for Change" (COM(2011) 637 final).

proportion of EU bilateral aid under the MFF 2014-2020 is or will be jointly programmed;

- Division of Labour is a crucial component of Joint Programming: donors agree among themselves that each one only focuses on certain areas or sectors while withdrawing from others;

- Delegated Cooperation: while certain donors remain active in a certain area or sector, they (co-financing donors) agree among themselves that their funds will be administered by one of them (fund-managing donor). As regards the EU, the Commission will in principle only agree to be co-financing or fund-managing donor in those sectors falling within the policy priorities outlined by the Agenda for Change. Delegated cooperation hence reduces aid fragmentation and proliferation of aid channels; it also reduces transaction costs and increases economies of scale. Member States, the EU and third donor countries are to be considered donors in this context (accepting private donations are possible, but does not qualify as Delegated Cooperation).

d) *Managing for results* - Both donors and partner countries manage resources and improve decision-making which targets results.

e) *Mutual accountability* - Donors and partner countries pledge that they will hold each other mutually accountable for development results.

3.2.1.2. Enhancing aid effectiveness by choosing the appropriate aid delivery method

In line with its commitments on aid effectiveness:

The Commission strongly encourages its services to move towards programme-based approaches directly in line with partner country policies, jointly programmed and funded with other donors and, most importantly, under the lead role of partner countries.

The Commission discourages its services from designing small stand-alone projects funded only by the EU.

Joint working with other donors through Delegated Cooperation (harmonisation and alignment), with the partner countries (ownership) and with international organisations covers the whole project cycle: alignment with the partner country's policy and jointly with the partner country; joint (partner country with all donors) analysis and identification of programme objectives and outputs; joint programme design and implementation planning that specifies the role and responsibility of each partner; joint monitoring; joint auditing; and joint evaluation and lesson learning.

The Council Conclusions on EU Code of Conduct on Complementarity and Division of Labour in

Development Policy outline how donors should streamline their participation in a specific country by focusing on a limited number of sectors per country[9]. Delegated Cooperation can aid this process.

Note that, where it appears to be the most efficient way to implement the action in question, and following the assessment of the partner country's Public Financial Management system, the Commission is encouraged to fund such programmes as sector budget support, using partner country systems (see Development Assistance Committee (DAC) definition[10]) to ensure the support is reported and implemented through the partner country's budget. It is a major advantage to have ownership and leadership by the partner country together with a reduced management burden as there is then no need to prepare reports for donors separately. Where the project modality is chosen, services are encouraged to give priority to indirect management with by the partner country over other management modes (see below).

3.2.2. Delegated Cooperation

3.2.2.1. Policy considerations

Delegated Cooperation among donors (EU and Member States, or also including third donor countries) requires trust, agreement on objectives and priorities and a like-minded approach to development, e.g. active support of international declarations on poverty reduction and aid effectiveness, country programme preparation processes, aid modalities, operations under indirect management with partner countries, and programme cycle management focused on results. Two or more donors with a like-minded approach and an interest in jointly funding a partner country's existing programme should consider Delegated Cooperation.

The Commission encourages Member States to provide their funds where appropriate, in particular for budget support actions.

Delegated Cooperation consisting in the Commission providing funds to an entity outside of the EU (i.e. the development agency of a third donor country) should only occur in exceptional and duly justified cases and on condition of reciprocity, and build upon any existing development cooperation or bilateral dialogue.

Delegated Cooperation is an instrument to be considered only if it:

- delivers development results more efficiently by sharing and maximising use of technical and management capacity and systems;
- promotes 'better donorship' practice with EU donors based on a systematic assessment of better cost/benefit/impact ratio;

[10] http://www.oecd.org/dataoecd/0/45/38597363.pdf.

[9] EU Code of Conduct on Complementarity and Division of Labour in Development Policy, Conclusions of the Council and of the Representatives of the Governments of the Member States meeting with the Council (15 May 2007).

- builds upon a clear comparative advantage of the fund-managing donor;
- promotes the role of the EU and Member States as a joint endeavour;
- promotes ownership and leadership of development programmes by partner countries and their accountability to people;
- encourages use of common results, monitoring, evaluation and accounting frameworks to reduce the number of separate donor reviews and different accounting procedures;

To sum up, Delegated Cooperation should not be considered if there are no clear benefits for the EU visibility, enhanced aid and development effectiveness. More specifically, Delegated Cooperation should not be considered if it is only seen as an additional budgetary resource or as a way of liquidating undisbursed funds.

3.2.2.2. Operational considerations

From an operational point of view, the criteria to consider for Delegated Cooperation are:

- delegated cooperation can take the form of a Delegation Agreement or a PA grant.
- a programme owned and led by the partner country (i.e. resulting from the partner country's national development plan and priorities) requires financial support, and two or more donors, including the Commission, within their respective strategies and programming, have agreed to provide the funding (this does not apply where there is no direct cooperation between the EU and the partner country, e.g. under Article 96 of the Cotonou Agreement for the EDF);
- the partner country agrees with this management arrangement by ultimately signing the financing agreement (this does not apply where there is no direct cooperation between the EU and the partner country, e.g. under Article 96 of the Cotonou Agreement for the EDF);
- one of the donors has the well-established and recognised technical and financial management capacity to lead on behalf of other donors and is willing to take on this role;
- the fund-managing donor has a significant pipeline by way of projected investments, to ensure that it will remain in the programme or sector in the near future, and it is willing to pool and share its expertise with other donors;
- Delegated Cooperation results in visibility gains for the EU, as well as in efficiency gain and reduced transaction costs for both the EU and the partner country;
- Delegated Cooperation results in larger and cost-effective programmes with a measurable or quantifiable operational impact;
- Delegated Cooperation covers large programmes and the EU amount given to the fund-managing donor, where this is a Member State Agency, under indirect management or under a PA grant is not less than EUR 3 million. projects concerning pure technical assistance where a

Member State authority uses mainly its staff to implement the project should not be implemented under indirect management, but through a service or a grant contract;

- operational co-financing of the fund-managing donor, where this is a MS agency. For actions with 100 % EU funding DEVCO Management agreement must be sought and convincing justification provided.

Where the above criteria are considered, Delegated Cooperation can be given serious consideration as an option. However, further work will be required by the participating donors to validate the compatibility and standards of the fund-managing donor's technical and financial management rules, procedures and systems (“pillar assessment” for indirect management, see below), as well as to agree the rest of the delegated authority arrangements, e.g. specific outputs and outcomes of the project or programme being co-financed and its operational and financial management, outlining the respective roles of the partner country and individual co-financing donors with regard to the project or programme's implementation, monitoring, reporting and evaluation.

Delegated Cooperation is a policy choice of cooperation, which first has to be considered under the responsibility of the authorising officer. EU Delegations can take the initiative to consult other donors about the possibility of managing funds on the Commission's behalf or to provide funds to it. DG DEVCO (Directors concerned and through them the other interested services) must be informed well in advance in order to launch the appropriate procedures if necessary (e.g. the pillar assessment, see below).

The Commission may increase its funding for a specific project already delegated to a fund-managing donor if the project is deemed especially successful in meeting the criteria listed above and when this is in line with the policy priorities outlined in the Agenda for Change.

Delegated Cooperation, as described above, is a development policy instrument contributing to aid and development effectiveness by enhancing donor coordination. Where the EU engages in Delegated Cooperation, it does so either as fund-providing donor (the implementation modalities are either indirect management or grants in direct management) or as fund-managing donor (the instruments are either (external) assigned revenue on the basis of a transfer agreement or an EU Trust Fund).

DELEGATED COOPERATION		
EU's partners	• Member States' • EFTA members' (Iceland, Liechtenstein, Norway, Switzerland) • Other third donor countries' Aid and Development Authorities(ministries and specialised agencies)	
EU's donor role	EU as co-financing donor	EU as fund-managing donor

Implementationin EU Public Finances	Indirect Management	Grant	Assigned Revenue(i.e. Transfer Agreement)	EUTrustFund

3.2.2.3. Delegated Cooperation EU/EFTA-wide

Under Delegated Cooperation at EU level, where the EU is a co-financing donor while a Member State agency is the fund-managing donor, the Commission entrusts budget-implementation tasks to this agency in indirect management or awards a grant in direct management.

The Member State agency can be a public-law body or a body governed by private law with a public-service mission providing adequate financial guarantees. In practice, it is either a ministry where the legal entity is the Member State itself or it is a separate legal entity (agency) established under public law (i.e. by a sovereign act of State, such as a law or a decree) or under private law (i.e. in a legal form of a private legal entity, such as a corporation/company, association or foundation, while that entity is entrusted by the government with public funding directly related to the tasks of implementing the government's development policy and under the latter's control, which is a public-service mission).

The potential partner of Delegated Cooperation must fulfil the following eligibility criteria:

- it operates at the highest government level (national or federal);
- it is specialised in technical or financial development cooperation with partner countries of the Development and Neighbourhood policies; as such, it is generally capable of mobilising co-financing of its own (i.e. from its Member State) or from other donors, along with that of the EU.

Delegated Cooperation with agencies of the EFTA countries (Norway, Switzerland, Iceland and Liechtenstein) should be treated the same way as that with Member States.

When DG DEVCO receives any new requests, it prepares also the decision of DG DEVCO Management on whether the Commission has a strategic goal of engaging in Delegated Cooperation with the interested entity and whether the conditions of Delegated Cooperation[11] may be respected by the candidate; when working in indirect management, the pillar assessment should be launched.

When working in indirect management, any entity has to be assessed in the pillar assessment and any weaknesses in its financial management have to be satisfactorily addressed either at the level of following up on the pillar assessment report recommendations or by way of appropriate remedial provisions in the delegation agreement.

The **list of entities that have been assessed** can be found at:

[11] Policy and operational considerations (see pages 18-19)

https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/audit/compliance-assessment/Pages/6-pillars.aspx (link to DEVCO intranet - accessible only to Commission staff)

Delegated Cooperation is an instrument integrated into the normal PCM procedure: it is described and justified in the documents (FinDec&AAP/M, AD, Special Entity Assessment Sheet) reviewed by the DEVCO Quality Support Group and adopted as a part of the FinDec&AAP/M.

A Special Entity Assessment Sheet has to be filled in, in its relevant sections, and submitted to DEVCO Headquarters together with the Action Document, so that it can be examined at the QSG2 stage. Only in particularly politically sensitive cases and in cases not respecting the minimum amount and contribution thresholds should the decision on Delegated Cooperation with a Member State's or EFTA country's (Norway, Switzerland, Iceland, Liechtenstein) agency be submitted to DG DEVCO Management.

If the concerned entity is a third donor country agency, the Director will submit the case to DG DEVCO Management.

If Delegated Cooperation is to be implemented by a direct grant not foreseen in the FinDec&AAP/M, the Special Entity Assessment Sheet shall be filled in and attached to the request for prior approval for a direct grant. In the cases described above, the Director will in addition submit the case to DG DEVCO Management.

The Special Entity Assessment Sheet examines the relevance and feasibility of the action for the EU, the partner country and the delegatee or grant beneficiary in case of a PA grant. It analyses whether the action contributes to the strengthening or rationalisation of a wider division of labour process, whether it is coherent with the EU strategies and programming documents, it assesses its impact as regards EU visibility, the cost-benefit/impact ratio and the likely risks and disadvantages of the measure. The risk may consist in one or more donors withdrawing from the Delegated Cooperation; a contingency plan or other risk-mitigating measures should be proposed for such scenario. With regard to the partner country, it asks whether the action is owned and led by it and aligned to its development strategy and whether it agrees with the implementation by the delegatee or grant beneficiary. Information on expected efficiency gains and reduction in transaction costs is also analysed. With regard to the delegatee or grant beneficiary, it is assessed whether it has the technical and financial management capacity to implement the action, on the basis of international track record, sectors of intervention and project pipeline, whether it provides advantages compared to other implementation modalities and whether it has significant and sustainable involvement in the relevant programme or sector. The eligibility of the delegatee has to be confirmed and information on possible reciprocity can be provided.

The **Special Entity Assessment Sheet** for assessing delegation agreements is available at:

Annex C1 : Special Entity Assessment Sheet

The FinDec&AAP/M must reflect the grounds for choosing the delegatee or grant beneficiary, bearing in mind the criteria mentioned above. The choice of the entity, particularly in cases of co-financing, may require prior coordination between the main entities in the field (e.g. different national agencies or donors from EU Member States present in the country and/or sector concerned). Also, it is necessary to involve the Member State as soon as possible.

Following the adoption of the FinDec&AAP/M, a delegation or a grant agreement will be signed with the entity. The delegation agreement will follow the template PAGoDA - option delegation agreement, see Chapter 7. Where a grant agreement needs to be signed the grant part of PAGoDA or the PRAG grant contract will be used (see section 3.1.6. above).

The degree of involvement of the Commission should be defined in the agreement or in Annex I of the delegation agreement concluded between the co-financing donors and the fund-managing donor. No derogation from the template delegation or grant agreement is allowed unless derogations have been approved and included in the relevant agreement. A high degree of involvement implies Commission participation in the policy dialogue, planning, monitoring and annual reviewing, reporting and evaluation processes. Minimum involvement implies for example an observer status in the annual policy dialogue and further reliance on the reporting by the delegatee - fund-managing donor. In any case, the Commission should lend weight and leverage to negotiations at the request of the fund-managing donor. The Commission's involvement should however not take the form of its participation in the decision making as this would risk watering down the responsibility of the entrusted entity/delegatee or grant beneficiary for the implementation of the action.

In certain cases the agencies will implement financial instruments under indirect management (e.g. loans, guarantees, equity investments), often in the framework of the Blending Facilities. In such a case, that agency has to have passed the pillar assessment including the financial instruments pillar. In that case a PAGoDA template adapted for financial instruments will be used.

3.2.2.4. Delegated Cooperation Worldwide -

Under Delegated Cooperation at worldwide level, where the EU is a co-financing donor while a third donor country agency is the fund-managing donor, the Commission entrusts budget-implementation tasks to this agency in indirect management or awards a grant in direct management.

Everything said in the context of Delegated Cooperation with the Member States' agencies, including the pillar assessment, applies, subject to the following:

- Delegated Cooperation by indirect management with third donor country authorities should be exceptional and duly justified; Delegated Cooperation by grants under direct management should also be exceptional and justified according to Article 190 RAP.

- there should be a DEVCO Management decision to authorise Delegated Cooperation in general with the applicant authority; and where appropriate, to launch the pillar assessment. However, there should also be a DEVCO Management decision for each concrete project of Delegated Cooperation under indirect management or by way of direct award of a grant;

- the entry point of any request, whether from a DEVCO service or from the interested body, is to DG DEVCO units which coordinate the preparation of the DEVCO Management decision to authorise Delegated Cooperation in general.

All cases of Delegated Cooperation, by way of grant or indirect management, with any other third donor country agency must be approved by DG DEVCO Management.

3.2.3. Funding to partner countries

3.2.3.1. Introduction

The Commission may delegate budget-implementation tasks under Budget and the EDF to partner countries (or to entities designated by them) under indirect management. This management mode was even agreed as the preferred one for the EDF pursuant to Article 34(2) of Annex IV to the Cotonou Agreement. From a policy perspective, it is also in line with the aid effectiveness principle of ownership by the partner country.

> In line with the principle of ownership by partner countries, which is at the heart of EU external cooperation policy, when the "project modality" is used as aid modality, procurement award procedures (for service, supplies and works contracts) and grants should be conducted and the resulting contracts implemented under indirect management with the partner countries, wherever possible. Note however that related audit and evaluation services are contracted by the Commission under direct management.

The scope of delegation of the budget-implementation tasks may vary. There are three options for delegation in use in the case of indirect management with the partner countries: partial delegation and full delegation with programme estimates or pool funds for sector wide programmes, to be described later.

Budget support to a partner country is another way of transferring resources to a partner country, however it does not fall under indirect management (see 3.2.3.2. below).

3.2.3.2. Indirect management with the partner country versus budget support

Indirect management with the partner country is, regardless the scope of delegation, a transfer of budget-implementation tasks from the Commission to the partner country. The policy choices have been made by the Commission even if they were normally established, given the aid effectiveness principle of ownership, in agreement with the partner country. The Commission remains politically responsible, within the framework of the discharge, for how the partner country carries out the budget-implementation tasks entrusted to it. For this reason, the Commission puts in place controls on the entity that carries out these tasks.

Budget support constitutes a transfer of EU resources to the national treasury of a partner country in support of a national development or reform policy and strategy (or in support of a sector programme in the case of sector budget support) conditional upon the achievement of defined results by the partner country. It is paid after the results have been obtained and could, hence, not have been used to achieve them. The funds are fungible and become a part of the overall budget resources of the partner country. They are spent through its normal systems and are not and do not have to be traced by the Commission further. The political responsibility of the Commission ends where it paid the budget support after having ascertained itself that the conditions are fulfilled (disbursement criteria). One of the basic conditions is, however, that the public finance management (i.e. the management of the country's overall budget resources) is sufficiently transparent, accountable, reliable and effective.

Further information on **budget support** may be found at:

https://myintracomm.ec.europa.eu/dg/devco/info-communication/visibility-communication-manual/Pages/budget-support.aspx (link to DEVCO intranet - accessible only to Commission staff)

Although the objectives and some of the means used are similar (e.g. increasing ownership and responsibility of the partner country by allowing that country to use country rules, procedures and systems), budget support (under direct management) as compared to project modality under indirect management with the partner country entails very different roles and responsibilities for the Commission.

It is thus important for the responsible authorising officer to bear these elements in mind when the aid delivery method and the management mode are chosen[12].

3.2.3.3. Scope of delegation: budget-implementation tasks delegated

Delegation means the entrustment of the budget-implementation tasks from the Commission to the partner country or countries. There are two areas that can be subject to the delegation:

- conducting procurement and grant award procedures and managing the resulting contracts only - partial delegation; or
- in addition to the above, carrying out payments to contractors and grant beneficiaries - full delegation with programme estimates.

As a rule, the contracting authority is a ministry, department or agency forming part of the public administration of the partner country (for the EDF, Article 35 of Annex IV to the Cotonou Agreement foresees a special function: the national authorising officer - see below).

The proposed scope of delegation will be reflected in the FinDec&AAP/M. After approval, the partner country will formally agree on the scope of delegation by signing the financing agreement. The remedial and support measures that the Commission has taken to ensure compliance with Article 60 of the Financial Regulation are described in the Action Document and in the PRAG which applies on the

[12] Note that as of the publication of PRAG 2015 the Commission will sign grant contracts with the governments of partner countries if the foreseen action does not include budget implementation tasks.

basis of the financing agreement.

A. Partial delegation

Responsibility for the procurement and grant award procedures is transferred to the partner country. As a rule, all contracts implementing the financing agreement must be awarded and implemented in accordance with the procedures and standard documents laid down by the Commission for its external operations, in force at the time of the launch of the procedure in question (with ex-ante control by the Commission at regular steps during the procedure).

The Commission's ex-ante control of the procurement and grant award procedures is defined in the Procurement and Grants for European Union External Actions - A Practical Guide (PRAG).Ex-ante control means that the Commission has to give its prior approval at all important stages in a contract award procedure, as detailed in the PRAG. The endorsement of a contract prior to its conclusion by the Commission signals the Commission's agreement to the later financing of the contract, provided that no errors in the procurement and grant award procedures are discovered later. In the event of a failure to comply with the procedures, the Commission may at any time refuse its approval for a given operation and thereby refuse EU funding for the operation in question. In all cases, additional ex-post controls are possible. The EU financial interests are therefore safeguarded, in addition to all the other possible means offered by the Financial Regulations, by the Commission's ex-ante control of individual transactions as well as subsequent controls or audits.

The Commission exercises ex-post control through regular controls or audits of on-going and closed projects. The EU financial interests are safeguarded, in addition to all other possible means offered by the Financial Regulations, through the recovery of any unduly disbursed funds where the agreed procedures have not been respected, or where the activities were not eligible for EU financing.

The contracting authority assumes full responsibility for its actions and is accountable for them in any subsequent audit or investigation.

In this scope of delegation, it is the Commission, and not the contracting authority, which makes all payments directly to the contractors and grant beneficiaries. Therefore, this delegation is partial: it does not include the delegation of the budget-implementation task of carrying out payments.

B. Delegation with programme estimates

The programme estimate is a document of the partner country endorsed by the Commission laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period. The programme estimate is signed by the imprest accounting officer and the imprest account administrator and the contracting authority of the partner country. The Commission signs it for endorsement.

In case of operations where the budget-implementation tasks of managing the programme estimate are entrusted to a private entity (service contractor) under the EDF (where the imprest accounting officer and imprest administrator administrator are designated by the service contractor to which the contract was awarded), the programme estimate will be signed by that third party, the contracting authority and the Commission.

The partner country submits the programme estimate for approval to the Commission at regular intervals, normally annually, before the activities it provides commence.

The programme estimate is a mixed form of financial implementation that may include activities entailing different levels of delegation. It is the value of the contract to be concluded, as defined in the PE Guide, which determines which form of delegation is allowed. For contracts below 300.000, these activities may be under full delegation (i.e. where the partner country also makes payments under the imprest components of a programme estimate) and/or for contracts above 300.000 under partial delegation (i.e. where the Commission makes the payments to contractors and grant beneficiaries).

Certain service contracts, mainly for audit and evaluation, the use of the framework contract for beneficiaries and technical assistance, will be implemented by the Commission in direct management. They should also be included, as a reminder, in the programme estimate because they form a part of the project.

Further, the programme estimate may contain a component that the partner country executes directly using staff it employs or it recruited, so-called direct labour[13].

Finally, operating costs of the partner country's implementing structure[14] may be eligible on conditions stipulated in the PE Guide. The difference between these operating costs and direct labour is that the latter concern operational activities of the action while the former cover the administrative costs of managing the programme estimate. For administrative costs the partner country's own procedures may be used.

Within an imprest component of a programme estimate, the payments under contracts (procurement, grants) and for regular operating costs and direct labour included within this imprest component will be carried out by the partner country or the body designated by it. Hence, the delegation in this case will be full. By consequence, the programme estimate must indicate which contracts will be covered by the imprest component. Procurement and grant award procedures above the threshold set in the PE Guide will be subject to ex-ante controls by the Commission.

On this basis, the partner country will proceed with the implementation of the programme estimate: it will be responsible for conducting the procurement and grant award procedures and for making the payments under the imprest component. The funds necessary for the payments will be replenished regularly once the supporting documents have been checked, amounting to a regular ex-post control of all action undertaken by the partner country under the imprest component. The programme estimate is thus the main document by which the Commission can verify the progress of the project carried out by the partner country under the terms of the financing agreement.

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[13] Note that as of the publication of PRAG 2015, direct labour will only be included in a programme estimate if the action foresees also budget implementation tasks. Stand-alone direct labour will be implemented by way of as grant contract.

[14] This should not be confused with support to the NAO under the EDF. As of the publication of PRAG 2015, support to the NAO will be implemented by way of an operating grant using the standard grant contract.

For the implementation of the imprest component of the programme estimate, the Commission requires that the partner country appoints the imprest administrator and the imprest accounting officer who manage it.

These cases are applied to the majority of on-going DG DEVCO projects implemented in indirect management with partner countries.

> Guidelines on the use of programme estimates can be found in the 'Practical Guide to procedures for programme estimates (project approach)' (PE Guide):
>
> http://ec.europa.eu/europeaid/work/procedures/financing/work_programmes/index_en.htm

Under a programme estimate, delegated implementation of procurement and grant award procedures and of payments proceeds as described below. Only EU/EDF contractual and financial procedures are used and the contracting authority does not manage substantial amounts of EU funds:

- Procurement and grant award procedures

The contracting authority uses EU procurement and grant procedures (following ex-ante controls except for procurement contracts below EUR 50 000 and except for covering administrative costs of the partner country's implementing entity), as reflected in the PRAG (see above A. Partial delegation).

- Payments

The partner country makes payments to contractors and grant beneficiaries, for direct labour and for ordinary operating costs under the imprest component of the programme estimate. These operating costs are the expenditure of the structure in charge of managing the programme estimates (salaries or top-ups, rent, phone, etc.).

The Commission pays funds to the partner country into a designated account, the imprest account, from which the contracting authority is authorised to make payments to third parties (contractors, grant beneficiaries and staff) in accordance with the terms of the financing agreement and the programme estimate.

The contracting authority can thus make payments for small scale contracts up to the ceilings provided for in the Practical guide to procedures for programme estimates (PE Guide).

It is important to remember that these transfers of funds to the partner country constitute payments as per Articles 90 and 91 FR. Therefore, the responsible authorising officer remains responsible for such payments, as well as for the prior definition and verification of the supporting documents (Article 110 RAP).

C. Pool funds for sector wide programmes

Pool funds for sector Programmes is a way of full decentralisation to the Partner Countries. A positive pillar assessment is required, as well as the existence of co-financing from other donors.

Pool funds are specially designed systems for financing expenditures within a sector programme, details on how the resources of the European Commission are "pooled" with allocations from other external financing agencies and potentially from Government are available at:

http://www.cc.cec/dgintranet/europeaid/activities/adm/documents/guidelines_support_to_sector_prog_11_sept07_final_en.pdf

Two conditions are required to enable the use of pool funds.

i. A positive pillar assessment enabling the delegation of budget implementation tasks[15].

i. The existence of co-financing from other donors so as to ensure an oversight infrastructure that limits the financial risks and reinforces the accountability for the EU funds.

When these conditions are met, it is possible to propose a Financing Decision and the corresponding Action Document to approve the participation in Pool Funds for sector wide programmes within indirect management. The recitals (10) and (11) of the template for Financing Decisions (G1b) already cover this case. Pending the update of the Action Document template, the Section 5.4.1.5 of the Action Document should be modified so as to properly reflect the description of the action. Adequate support can be found at DEVCO 06 .

For a pool fund, a Financing Agreement (and not a PAGoDA) will be signed with the Partner Country. An update of the Financing Agreement template will be developed within 2015 to cater for this possibility.

After the successful pillars assessment, the partner country manages all the funds allocated to the action/programme using its own financing rules and making all payments. Normally it will also use contractual procedures which are different than those of the EU/EDF (PRAG and Programme Estimates), either its own procedures or the ones agreed among the donors. The European Commission together with other donors transfer their contributions to an account managed by the partner country. The funds would thus be pooled and administered by the partner country itself. The notional approach may also apply. Delegation of residual tasks is not possible.

According to the result of the pillar assessment or the agreement among donors, limits to the amount for direct payments can be introduced in an ad-hoc basis.

For pool funds for sector wide programmes, audits and evaluations will still be contracted under direct management.

3.2.3.4. For the EDF, National, Regional, intra-ACP and Territorial Authorising Officers

While under the Budget the partner country's rules on division of powers decide who the signatory of

[15] In case a previous positive pillar assessment was performed and a new one is required to meet the requirements of the new Financial Regulation (for instance to check the effectiveness of the systems) it is possible to rely on the presumption of conformity under similar conditions than the ones applied to other Organisations (see section 3.1.1.5).

the financing agreement will be, in the Cotonou Agreement it was agreed and in the framework of the Overseas Association Decision decided that the ACP States and OCTs will appoint a person to represent that country or territory in all matters of implementing the EDF. This person is the national or territorial authorising officer (NAO). For actions common to all ACP States, it is the intra-ACP authorising officer (as a rule, the ACP Secretariat in Brussels) appointed by the ACP Committee of Ambassadors and for regional actions it is the regional authorising officer who is a representative of a regional international organisation of the partner countries. His or her tasks are consequently defined in Article 35 of Annex IV to the Cotonou Agreement for ACP States and in Article 14 of Commission Regulation No 2304/2002 implementing the Overseas Association Decision for OCTs. Collectively, they will be called "EDF authorising officer".

Wherever the conditions regarding institutional capacity and sound financial management are met, the EDF authorising officer may delegate his or her functions for implementation of the actions concerned to the body responsible within the national or territorial administration, notifying the Head of Delegation accordingly[16].

The main tasks of this EDF authorising officer, some of which go beyond budget-implementation tasks, are to:

- be responsible for the coordination, programming, regular monitoring and annual, mid-term and end-of-term reviews of the implementation of cooperation, and for coordination with donors;
- in close cooperation with the Head of Delegation, be responsible for the preparation, submission and appraisal of projects and programmes;
- prepare tender files and documents for calls for proposals;
- submit tender files and documents for calls for proposals to the Head of Delegation for approval before launching invitations to tender and calls for proposals;
- in close cooperation with the Head of Delegation, launch invitations to tender and calls for proposals, receive tenders and proposals, chair their evaluation and establish the results thereof;
- approve and submit to the Head of Delegation for approval the results of evaluation of tenders and proposals, and also the proposals for the award of contracts and grants;
- submit contracts and contract riders to the Head of Delegation for approval and endorsement[17];

[16] It is strongly recommended that this delegation of powers be provided for in Annex I (Technical and Administrative Provisions) of the Financing agreement.

[17] With the exception of contracts and contract riders for which payments will not be executed by the Commission on behalf of one or more ACP States (see section 4.2.1 of the Practical guide to procedures for programme estimates (project approach)).

- submit programme estimates and riders thereto to the Head of Delegation for approval and endorsement;
- sign contracts and contract riders approved by the Head of Delegation;
- validate and authorise expenditure within the limits of the funds assigned to him or her;
- make any adaptation arrangements necessary to ensure the proper execution of actions from the financial and technical viewpoint;
- make minor adjustments and technical changes to projects and programmes provided that they do not affect the technical solutions adopted and remain within the limit of the reserve for adjustments included in the budget of the financing agreement, provided that he/she informs the Head of Delegation without delay;
- decide on the imposition or remission of penalties for delay, provided that he/she informs the Head of Delegation without delay;
- decide on the discharge of guarantors, provided that he/she informs the Head of Delegation without delay;
- decide on final acceptance, provided that the Head of Delegation is present at provisional acceptance, endorses the corresponding minutes and, where appropriate, is present at the final acceptance, in particular where the extent of the reservations recorded at the provisional acceptance necessitates major additional work;
- sign final payments for works and supply contracts.

The EDF authorising officer must assume financial responsibility for the executive tasks assigned to him or her.

Where the (Commission's) authorising officer by delegation becomes aware of problems in carrying out procedures relating to management of EDF resources, he or she will, in conjunction with the EDF authorising officer, make all contacts necessary to remedy the situation and take any steps that are necessary.

Where the EDF authorising officer does not or is unable to carry out the tasks incumbent on him/her, the Commission's authorising officer by delegation may temporarily take his/her place according to the conditions as set out in Article 96 of theCotonou agreement.

3.2.4. Cooperation with International Organisations

General considerations

An international organisation is an international public sector organisation having a legal personality under international law set up by an intergovernmental agreement or a specialised agency set up by such organisation. These organisations may have worldwide or regional scope. Organisations created under national law are not international organisations even if their members are States.

The Financial Regulation (Article 43(1) RAP) also recognises as international organisations the International Committee of the Red Cross and the International Federation of National Red cross and Red Crescent Societies. Note that national societies of the Red Cross or Red Crescent are not regarded as international organisations.

The typical feature of international organisations is their specialisation in certain activities relevant for the EU's objectives. Certain international organisations, in particular the UN, are therefore subdivided into specialised agencies and offices. This specialisation, along with the capacity to provide co-financing (its own or from other donors) should be the primary reasons for selecting a certain organisation as the best of alternatives; the selection must be justified and based on objective reasons.

Any DEVCO directorate that receives, at HQ or EU Delegation, a claim of an entity to be an international organisation, and there is an interest in cooperation with that entity in indirect management, shall do an assessment of the nature of the Organisation before proceeding to the pillar assessment.[18]

Mutatis mutandis provisions made in the context of Delegated Cooperation with the Member States' agencies (see section 3.2.2.3.), including the pillar assessment (see section 3.1.1.5.) and the Special Entity Assessment Sheet, apply to the cooperation with international organisations.

The decision to work with an international organisation can be taken at different stages of the project management cycle: (1) Programming: although this decision is in principle an implementation issue, the programming phase can already mention an international organisation, in general as a result of an agreement with the partner country; (2) Identification: following appraisal of options by operational staff; (3) Formulation: following appraisal of options by operational staff, the choice to use indirect management with a specific international organisation and its name must be stated at the latest in the Action Document forming part of the FinDec&AAP/M. (4) Implementation: Please note that a grant or service contracts may be awarded to an international organisation. In this case, the PRAG contract award procedures apply. In case of a direct grant not foreseen by the FinDec&AAP/M, the Special Entity Assessment Sheet shall accompany the request for prior approval for awarding a direct grant

3.2.4.1. Application of framework agreements with international organisations

Framework agreements concluded with international organisations provide the Commission with a useful and simplified legal and financial framework for cooperation with international organisations.

Each framework agreement defines its scope of application to cooperation between the Commission and the organisation. That scope usually applies to indirect management and some forms of direct management. If it applies to direct management (grants), it shall also apply to grants awarded under calls for proposals unless they are explicitly excluded from the framework agreement. The Framework Agreements do not apply to procurement.

[18] See ARES(2015)41044. Further guidance on the procedure to follow within DEVCO will follow.

Annex C4e : Template for One UN, Multi Partner Trust Funds (MPTF) and Joint Programmes - this template can be used as an alternative to the contribution agreement where the latter is still authorised for use

Framework agreements have been concluded between the Commission and the following international organisations:

United Nations: “Financial and Administrative Framework Agreement” of 29 April 2003, covering a large number, but not all, UN specialised bodies and agencies, amended in 2014;

World Bank group: “Framework Agreement between the European Commission on behalf of the European Union and the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation and the Multilateral Investment Guarantee Agency” of 2014, including a template Administration Agreement for indirect management and a template Administration Agreement for a grant under direct management, as well as attachments on verifications, visibility, supporting documents, management modes and template management declaration which form a self-standing contractual framework to the exclusion of PAGoDA; this Framework Agreement does not apply to financial instruments;

The **framework agreement with the World Bank Group** and related information is available at:

Annex G3ma : Framework Agreement between the EU and the WB Group

Annex G3mb : Administration Agreement under Direct Management (= Grant - attachment 2 to the FA)

Annex G3mc : Administration Agreement under Indirect Management (attachment 1 to the FA)

Annex G3md : Management Declaration under Indirect Management (attachment 6 to the FA)

The **Financial and Administrative Framework Agreement (FAFA) with the United Nations** and related information can be found at:

http://ec.europa.eu/europeaid/funding/procedures-beneficiary-countries-and-partners/fafa-united-nations_en and Annex G3n (Chapter 7)

In 2015 a number of framework agreements will be signed, among them updates to:

- Organisation for Economic Cooperation and Development (OECD), April 2006;
- Council of Europe (CoE), August 2004;
- European Bank for Reconstruction and Development (EBRD)

- International Monetary Fund (IMF), January 2009;
- Inter-American Development Bank (IDB), July 2011;
- International Organisation for Migration (IOM), November 2011.

Negotiation of framework agreements

A request to conclude a framework agreement may be initiated by the interested international organisation or by the services of the Commission. All requests should normally be addressed to the Director-General of DG DEVCO. DG DEVCO remains the lead service for this exercise within the Commission. If the Director-General decides that the request should be considered, he or she will forward it to Directorate DEVCO.R, which will handle the file. This Directorate, which will work closely with Directorate DEVCO.A, may be assisted by other services of DG DEVCO or other Directorates-General concerned and the EEAS.

Directorate DEVCO.R will first consult Directorate DEVCO.A and other services within DG DEVCO and then, if necessary, other Commission services and the EEAS, on whether negotiations should be opened with the organisation. It will inform the Director-General of DG DEVCO of the result of these consultations, who will ultimately decide whether negotiations should be initiated. The Director-General could also give instructions or guidelines for the negotiations (e.g. whether a joint working group verifying the implementation of the agreement should be constituted, whether the participation of the Commission in the bodies of the organisation should be considered, and who should perform the pillar assessment review).

Within Directorate DEVCO.R, unit DEVCO.R3 will be the lead service for negotiating the framework agreement. In parallel, the unit in charge of carrying out the pillar assessment (DEVCO.R2) will request the necessary information from the organisation.

Once the parties have agreed on the content of the framework agreement at the technical level, the text is submitted by Directorate DEVCO.R, in agreement with Directorate DEVCO.A, for the approval of the Director-General of DG DEVCO.

The agreed text will be adopted by the Commission in written procedure which will be preceded by an inter-service consultation of the services concerned, including in any case the Secretariat-General, the Legal Service and DG BUDG.

The Commission decision approving the framework agreement on behalf of the Commission will also identify the person authorised to sign it, normally the Commissioner in charge of the Development policy or any Commission staff member designated by him or her (to match the level at which the international organisation will sign the agreement). Normally three originals of the agreement will be signed, one for the organisation and two for the European Commission.

For more details on the procedure to be followed for the signature of Framework Agreements of

Financial and Administrative nature with International Organisations, please refer to Annex C6.

DG DEVCO has developed a series of **Frequently Asked Questions** with international organisations that can be found at:

http://ec.europa.eu/europeaid/node/1113

These FAQs are for guidance only and do not have a legally binding value, nor could they be relied upon by a party outside the Commission in any legal or administrative procedure against it. Always examine whether they are still relevant with regard to the Framework Agreement in force. A PAGoDA manual, also addressing Indirect Management, is foreseen for publication in 2015.

3.2.5. Cooperation with the European Investment Bank (EIB) and Fund (EIF)

The European Investment Bank and Fund are not international organisations but EU bodies. The relations with the EIB and EIF are governed by framework agreements which contain general conditions for delegation agreements, grants and procurement. The PAGoDA will be used, but the Framework Agreements will take precedence in case of conflict. The pillar assessment (see below) of the EIB (2014) has been carried out by DG ECFIN and is compatible with the new Financial Regulation. For the EIF, the new pillar assessment, replacing the one from 2010, has been requested; the cooperation with the EIF can hence be continued under the presumption of conformity.

Annex G3n: Framework Agreement with the EIB

Annex G3o: Framework Agreement with the EIF

3.2.6. Blending Facilities: Indirect Management with the Lead Financial Institution

Blending Facilities are regional initiatives in which EU financing leverages funding provided by a financial institution or a consortium of financial institutions coordinated by a lead financial institution. Blending Facilities finance projects in the targeted geographical areas and sectors by way of financing technical assistance necessary for the preparation of the project, "investment grant[19]", interest rate subsidies or financial instruments (such as loans, equity, guarantees or other risk-sharing instruments).

A Regional Blending Facility is implemented by way of calls for expression of interest addressed to candidate delegatees: Member States' or third donor countries' agencies, international organisations (such as international development banks) or the EIB. These calls for expression of interest are launched following the adoption of a FinDec&AAP/M. This FinDec&AAP/M stipulates the selection and award criteria; the former ones treat the experience and operational and financial capacity of the candidate; the latter ones address the quality of the project and its compliance with the objectives of

[19] Not to be confused with the grants as regulated by the Financial Regulation Title VI.

the Regional Blending Facility. The FinDec&AAP/M includes an annex containing the indicative project pipeline.

Following the positive evaluation of the projects to be financed under the Facility, the award takes place once a complementary financing decision (template G1f) is adopted. These complementary decisions must be taken during the validity of the global commitments (N+1). The project sheets of the individual approved projects are attached to the inter-service consultation on these financing decisions as supporting documents. The related Delegation Agreements must be signed as well within N+1.

The awarded delegatees have to have passed the pillar assessment prior to the signature of the delegation agreement. However, where EU funding is provided in the form of a financial instrument (equity, quasi-equity, loan, guarantee, other risk-sharing instrument), the delegatee must have also passed the financial instruments pillar of the pillar assessment; in that case the specific provisions for financial instruments in the delegation agreement will apply.

The operations under the Regional Blending Facilities will be implemented under indirect management with the Lead Financial Institution. That institution may sub-delegate (see section 3.1.1.4) budget-implementation tasks to the partner country; the institution remains responsible for examining the partner country's rules, procedures and systems.

3.2.7. Using the expertise of EU Specialised Agencies

Certain EU powers under the Treaties are not exercised by the Commission, but have been entrusted by legislation to specialised EU agencies, also called decentralised, traditional or regulatory agencies. Specialised EU agencies are not to be confused with executive agencies. These specialised agencies exercise these powers in accordance with the legislative acts establishing them either alone or as leaders of networks composed of specialised bodies in Member States with complementary powers. The list of these specialised EU agencies is here:

http://europa.eu/about-eu/agencies/regulatory_agencies_bodies/index_en.htm

These EU agencies are highly specialised. It is therefore possible that some actions supporting the partner country in the sector of the expertise of such an EU agency are best implemented by it. In this context, the distinction between awarding grants (usually direct grants), on the one hand, and delegating budget-implementation tasks under indirect management applies.

In terms of financial management, these specialised EU agencies have rules, procedures and systems which reflect, where applicable, those of the Commission.

- Most of them are also referred to as bodies referred to in Article 208 of the Financial Regulation which means that they apply financial rules based on the so-called framework Financial Regulation (Commission Delegated Regulation (EU) No 1271/2013) which reflects, where applicable, the EU Budget Financial Regulation.

- Community Plant Variety Office (CPVO) and Office for Harmonisation in the Internal Market (OHIM) are fully self-financing, For this reason, it is not necessary for them to undergo a standard pillar assessment as described in section 3.1.1.5. where indirect management is considered. Instead, the DG DEVCO service envisaging indirect management with such an agency will make their own assessment requesting the agency to provide (1) the opinion of the Court of Auditors and the discharge resolution for the preceding three years and (2) any reports that the Commission's Internal Audit Service, an in-house internal audit capability or any other body performing the internal audit in the agency elaborated in the preceding three years on issues relevant for the pillar assessment. The conclusions of this analysis, while respecting the internal nature of the internal audit reports, will be set out in the Special Entity Assessment Sheet the template of which is annexed to this Companion (C1a). Such an assessment can also be done in order to authorise the use of the PA Grant part of the PAGoDA, which would have the advantage of having a uniform template for both grant contracts and delegation agreements. An assessment not older than 4 years can be relied upon repeatedly.

The agency will not be required to provide any co-financing from its own resources (whether under indirect management or under a grant); however, CPVO and OHIM, which do not receive any annual subsidy from the EU budget, may be requested to co-finance. Co-financing from other donors, by contrast, can be recommended.

Additional guidance on indirect management with EU specialised agencies is provided for in the revised Framework Financial Regulation (Article 8):

- The entrusted tasks should be compatible with the agency's mission defined in the act establishing it (including any co-financing); however, these tasks cannot be among its statutory tasks.

- Discharge in respect of these funds will be given to the Commission. Thus a clear separation of resources employed for implementing the delegation agreement is required - delegated tasks should be carried out under clearly separated cost accounting and reporting and with the consent of the agency's management board. DG DEVCO services should also consult the Directorate-General representing the Commission in that management board in advance on the intention to delegate such tasks.

A PAGoDA - delegation agreement will be concluded with the EU specialised agency.

Subject to the provisions above, the rules and procedures established in the section 3.3. “Indirect management with Member State agencies” apply. It is repeated that implementation by executive agencies is direct management and this section does not apply to it.

19. The implementation of grant contracts - A Users' Guide

(PRAG version 2013.1 rev)

19.1. Introduction

The General Conditions contain the basic essential articles governing the implementation phase for grants contracts.

They may be subject to modification by the Special Conditions which are part of the contract and which also include any necessary supplementing clauses or derogations to the General Conditions, taking into account the specific circumstances of the Action or Work programme to which the contract relates.

These Special and General Conditions, together with the other contractual provisions, are the legally binding documents which govern the parties' rights and obligations under the contract. The Special conditions prevail over the General Conditions.

These guidelines are meant to provide some suggestions and good practices for the management of the Action and are not legally binding, nor can they be relied upon to challenge a Contracting Authority's decision, judicially or otherwise.

The information contained is of general guidance; specific rules may be set for each call for proposal and will have to be respected.

These guidelines do not deal with each and every article of the General Conditions and do not cover all the provisions in the articles of the Grants Contract. Nor do they cover all of the call documents and contract annexes. They deal with those issues which are considered essential or complex and that may require some further explanations.

For reference made in these guidelines, the following documents are annexed to the Special Conditions and form an integral part of the Contract:

Annex I: Description of the Action (including the Logical Framework of the Project and the Concept Note) (Part 2.1 of Annex e3b; and Annex e3d)

Annex II: General Conditions applicable to European Union-financed grant contracts for External Actions (Annex e3h2)

Annex III: Budget for the Action (worksheets 1, 2 and 3)/operating grants: operating budget (Annex e3c)

Annex IV: Contract-award procedures (Annex e3h3)

Annex V: Standard request for payment and financial identification form (Annex e3h4)

Annex VI: Model narrative and financial report/operating grants: annex if specific models are to be used for activity reports and financial statements (e3h5-7)

Optional:

Annex VII: Terms of reference for an expenditure verification of a Union financed grant contract for external actions and model report of factual findings (e3h8)

Annex VIII: Model financial guarantee (e3h9)

Annex IX: Standard template for Transfer of Asset Ownership (e3h10)

NB: In these guidelines, the term "Beneficiary(ies)" refers collectively to all Beneficiaries, including the Coordinator.

The rules applicable to the Beneficiary(ies) especially with regard to the eligibility of costs and rights of checks and audits by the Commission, OLAF, and the Court of Auditors, apply also to the Affiliated Entity(ies) identified in the Special Conditions.

19.2. General and administrative provisions

19.2.1. Article 1 - General provisions

Text of the Article	Guidelines
1.1. The Beneficiary(ies) and the Contracting Authority are the only parties to this Contract. Where the European Commission is not the Contracting Authority, it is not party to this Contract, which confers on the European Commission only the rights and obligations explicitly mentioned in this Contract.	This provision refers particularly to decentralised management, where the Contracting Authority is usually not the European Commission but instead, for instance, the National Authorising Officer or the Regional Authorising Officers or a Line Ministry. This is also the case with grant contracts signed within programme estimates.
1.2. This Contract and the payments attached to it may not be assigned to a third party in any manner whatsoever without the prior written consent of the Contracting Authority.	

19.2.1.1. Data Protection

Text of the Article	Guidelines

1.3. Any personal data will be processed solely for the purposes of the performance, management and monitoring of this Contract by the Contracting Authority and may also be passed to the bodies charged with monitoring or inspection tasks under European Union law. Beneficiaries will have the right of access to their personal data and the right to rectify any such data. If the Beneficiary(ies) have any queries concerning the processing of personal data, they shall address them to the Contracting Authority. The Beneficiary(ies) will have right of recourse at any time to the European Data Protection Supervisor.	
1.4. The Beneficiary shall limit access and use of personal data to that strictly necessary for the performance, management and monitoring of this Contract and shall adopt all appropriate technical and organisational security measures necessary to preserve the strictest confidentiality and limit access to this data.	

19.2.1.2. Role of the Beneficiary(ies)

Text of the Article	Guidelines

	This Grant Contract should be used for: (i) all modalities of Action Grants: mono-Beneficiary with/without Affiliated Entity(ies) and multi-Beneficiary with/without Affiliated Entity(ies), including when one of the Beneficiary(ies) is an international organisation (in which case refer to the special provisions for international organisations in Annex e3h11). (ii) in case of Operating Grants. Affiliated Entity(ies) Only the following entities shall be considered as Affiliated Entity(ies) to the Beneficiary(ies): (i) entities which together form one entity (which would then apply as a Beneficiary(ies)), including where this entity is specifically established for the purpose of implementing the Action. (i.e. most notably in the case of a consortia); or (ii) entities having a link with the Beneficiary(ies), notably a legal or capital link. This link must be neither limited to the Action nor established for the sole purpose of its implementation. (i.e. the most common case is that of a network of entities).

	In addition, in order to qualify as Affiliated Entity(ies) these entities shall also satisfy the eligibility and non-exclusion criteria listed in the Guidelines for applicants (annex e3a) Affiliated Entity(ies) are not signatory(ies) of the Grant Contract and therefore are not Beneficiary(ies) of the Action. However, Affiliated Entity(ies) participate in the design and implementation of the Action and, provided they comply with all the relevant rules already applicable to the Beneficiary(ies) under the Grant Contract, the costs they incur (including those incurred for Implementation Contracts and Financial Support to third parties) shall be considered as eligible costs incurred by the Beneficiary(ies) to which they are affiliated.. Affiliated Entity(ies) shall be listed in article 7.1 of the Special Conditions (annex e3h1). Clarification on (ii) on the legal and capital link The legal or the capital link foreseen in (ii) above shall not be established simply for the purpose of the Action nor limited simply to the duration of the Action in question. On the contrary, the legal or the capital link shall, as a rule, be a “stable” link encompassing more than just the Action in question. A transitional or provisional link would therefore hardly fulfil the conditions set in point (ii) above.

	Similarly, a “soft” link, such as a non-binding link (for example a non-binding Memorandum of Understanding) or, in general, any link where the parties do not clearly imply a legal commitment or clearly intend to create a legally enforceable relationship between them, would very unlikely be considered as the legal link required under point (ii) above. A legal link should in addition be appropriately set down in a document of stringent legal nature. With regard to the evidence required to prove the legal link, it is likely that any “constitution” document (amongst which the documents usually required as supporting documents in the application phase (i.e. the statutes or articles of association of the applicant, of each co-applicant(s) and of each Affiliated Entity(ies)) etc.) might already reflect the particular nature of the link between the entities concerned and therefore provide the Evaluation Committee with all the necessary information for its assessment. In any event, applicants shall submit any document they consider useful to prove full compliance with point (ii) above. A capital link shall be understood as any participation in the ownership of another entity: to this purpose, any document showing this participation should be submitted.

1.5. The Beneficiary(ies) shall: a) carry out the Action jointly and severally vis-a-vis the Contracting Authority 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 Contract. To this purpose, the Beneficiary(ies) shall implement the Action with the requisite care, efficiency, transparency and diligence, in line with the principle of sound financial management and with the best practices in the field. b) be responsible for complying with any obligation incumbent on them from this Contract jointly or individually; c) forward to the Coordinator the data needed to draw up the reports, financial statements and other information or documents required by this Contract and the Annexes thereto, as well as any information needed in the event of audits, checks, monitoring or evaluations, as described in Article 16; d) ensure that all information to be provided and request made to the Contracting Authority is sent via the Coordinator; e) agree upon appropriate internal arrangements for the internal coordination and representation of the Beneficiary(ies) vis-a-vis the Contracting Authority for any matter concerning this Contract, consistent with the provisions of this Contract and in compliance with the applicable legislation(s).	The term “Beneficiary(ies)” refers collectively to all Beneficiaries of the Action, i.e. all entity(ies) signatory(ies) of the contract (either because they signed the contract directly or because the Coordinator signed the Grant Contract also on their behalf, as provided in the mandate attached to the application form (section 4.2. of annex e3b). The Beneficiary(ies) shall be listed in the special conditions (annex e3h1) a) all Beneficiary(ies) are jointly responsible to carry out the Action 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 the Grant Contract. e) these arrangements differ from the mandate conferred to the Coordinator attached in the application form (section 4.2. of annex e3b) which needs to be submitted to the Contracting Authority during the application phase. These arrangements are an internal agreement between the Beneficiary(ies) and, as such, do not need to be submitted to the Contracting Authority.

19.2.1.3. Role of the Coordinator

Text of the Article	Guidelines

1.6. The Coordinator shall: a) monitor that the Action is implemented in accordance with this Contract and ensure coordination with all Beneficiary(ies) in the implementation of the Action; b) be the intermediary for all communications between the Beneficiary(ies) and the Contracting Authority; c) be responsible for supplying all documents and information to the Contracting Authority which may be required under this Contract, in particular in relation to the requests for payment. Where information from the Beneficiary(ies) is required, the Coordinator 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 Coordinator to the Contracting Authority, shall be deemed to have been given in agreement with all Beneficiary(ies);	

d) inform the Contracting Authority of any event likely to affect or delay the implementation of the Action; e) inform the Contracting Authority of any change in the legal, financial, technical, organisational or ownership situation of any of the Beneficiary(ies), as well as, of any change in the name, address or legal representative of any of the Beneficiary(ies); f) be responsible in the event of audits, checks, monitoring or evaluations, as described in Article 16 for providing all the necessary documents, including the accounts of the Beneficiary(ies), copies of the most relevant supporting documents and signed copies of any contract concluded according to Article 10. g) have full financial responsibility for ensuring that the Action is implemented in accordance with this Contract;	
h) make the appropriate arrangements for providing the financial guarantee, when requested, under the provisions of Article 4.2 of the Special Conditions i) establish the payment requests in accordance with the Contract; j) be the sole recipient, on behalf of all of the Beneficiary(ies), of the payments of the Contracting Authority. The Coordinator shall ensure that the appropriate payments are then made to the Beneficiary(ies) without unjustified delay; k) not delegate any, or part of, these tasks to the Beneficiary(ies) or other entities.	h) given that the financial responsibility is on the Coordinator, any eventual financial guarantee shall therefore be made on the name of the Coordinator.

1.2. This Contract and the payments attached to it may not be assigned to a third party in any manner whatsoever without the prior written consent of the Contracting Authority.	

19.2.2. Article 2 - Obligation to provide financial and narrative reports

Text of the Article	Guidelines
2.1. The Beneficiary(ies) shall provide the Contracting Authority with all required information on the implementation of the Action. The report shall be laid out in such a way as to allow comparison of the objective(s), the means envisaged or employed, the results expected and obtained and the budget details for the Action. The level of detail in any report should match that of the Description of the Action and of the Budget for the Action. The Coordinator shall collect all the necessary information and draw up consolidated interim and final reports. These reports shall: a) cover the Action as a whole, regardless of which part of it is financed by the Contracting Authority;	The Coordinator is the sole interlocutor of the Contracting Authority and is responsible for collecting all the necessary information for drawing up consolidated reports The Coordinator is therefore responsible for obtaining, verifying and consolidating this information before passing it on to the Contracting Authority. All the Beneficiaries agree that any information given, as well as any request made by the Coordinator to the Contracting Authority, is in agreement with all the Beneficiary(ies). The Coordinator may not oppose to the Contracting Authority shortcomings in reporting due to other Beneficiary(ies) and has full responsibility for the reports or information submitted to the Contracting Authority (ref. Article 1.6 c) of the General Conditions).

b) consist of a narrative and a financial report drafted using the templates provided in Annex VI; c) provide a full account of all aspects of the Action's implementation for the period covered, including in case of simplified cost options the qualitative and quantitative information needed to demonstrate the fulfilment of the conditions for reimbursement established in this Contract ; d) be drafted in the currency and language of this Contract; e) include any update on the Communication plan as provided by Article 6.2 f) include any relevant reports, publications, press releases and updates related to the Action;	Reporting formats (narrative & financial, interim & final, see Annex VI to the grant contract) have to be used. The period covered by the narrative report must match with the period covered by the financial report and must be clearly stated. These reports, both narrative and financial, (as well as audits, expenditure verifications and detailed breakdown of expenditure, when applicable) must cover the whole Action as it was presented in the application form and accepted by the Contracting Authority, not only the share financed by the grant. The final agreed version of the Action is attached in Annexes I and III to the contract.
	The purpose of reports is to explain: - the results achieved and the related costs identified in the Financial Report - the deviations that may have occurred (subject to art.9) as compared to the initial proposal with regards to results and to means and costs. If it is not clear to the Contracting Authority which results have been achieved or how the activities reported are related to the results of the Action, additional information and clarification will be requested. It is important that this 'focus on results' be kept in mind when preparing the reports, in order to provide information on the type of costs incurred and to understand their relation with the results/activities of the Action (ex: to justify significant amounts featuring in the Financial Report, to demonstrate the fulfilment of the conditions for reimbursement in case of simplified cost options).

	The narrative report may contain sensitive information, for instance on the Beneficiaries' evaluation of the collaboration with local authorities. When the Contracting Authority is not the European Commission and if some information needs to be kept confidential, the Coordinator must request it as soon as possible and come to an arrangement with the Contracting Authority on the parts concerned. The financial reports should have at least the same level of detail as the budget annexed to the contract. Any relevant variation from the budget initially submitted must be explained. Minor changes do not necessarily need to be systematically explained, but the Beneficiary(ies) must be able to justify them upon request. The financial reports must be consistent with the records, accounts, and ledgers of the Beneficiary(ies) and/or their Affiliated Entity(ies).

	A detailed breakdown of expenditure (for example a nominal ledger) or an expenditure verification report has to be attached, when required in accordance with article 15.7. Language and supporting documents The reports need to be presented in the language in which the contract was drawn up. The Coordinator may, prior to the signature of the contract, ask for a derogation to be inserted in the Special Conditions. If justified it may be granted on a case-by-case basis by the Contracting Authority. As a general rule, in the case of local languages, no systematic translation of supporting documents (purchase orders, invoices, etc) is needed. Nevertheless, the intelligibility and translation of key parts of relevant documents should be envisaged to ensure comprehensive internal control and supervision at HQ or coordination level, as the case may be.

	For reporting purposes, when the headings of the financial tables or statements originating directly from the internal reporting are written in another language than the one of the contract, a translation in the language of the contract should be provided. This can be done globally in an annex, if it is more convenient for the Beneficiary or helps the readability of the report or document. No originals or copies of invoices, contracts or order forms have to be added to the reports. The only exceptions are for copies of studies, evaluation or audit reports, or press releases etc. in case the respective costs are being claimed under the direct costs. However, when deemed necessary for understanding the eligibility of costs, the Contracting Authority may always ask for more specific information (for example copies of supporting documents - no certified copies are usually needed, however originals are requested during audits or expenditure verifications).
2.2. Additionally the final report shall: a) cover any period not covered by the previous reports b) include the proofs of the transfers of ownership as referred to in Article 7.5.	The final report has to give an overview of last year's implementation and of the Action as whole for all its duration. In all cases, the final report must include a detailed breakdown of expenditure covering the whole Action, as well as an expenditure verification report if requested in Art. 15.7. The information on transfers of ownership has to be provided using the template in Annex IX and the copies of the proofs of transfers have to be attached according to Art. 7.5.

2.3. The Special Conditions may set out additional reporting requirements.	The standard reporting period is intended as a 12-month period, unless specified otherwise. According to the nature of the Action, different reporting requirements (financial or narrative) may be requested by the Contracting Authority at contract preparation stage. Once agreed upon, they are included in Article 7.2 of the Special Conditions.
2.4. The Contracting Authority may request additional information at any time. The Coordinator shall provide this information within 30 days of the request, in the language of the Contract.	The Contracting Authority has the right to ask for more information on the basis of a justified request, for instance if the submitted reports are not detailed enough. The Contracting Authority is entitled to request any additional information it considers necessary throughout the contract period. Following such a request the Coordinator has 30 days to collect all the necessary information and draw up a consolidated reply. The additional information, explanations, and contextual information, has to be presented in the language of the contract (i.e. the language in which the contract was drawn up), or in a language accepted by the Contracting Authority, but the original supporting documents may be in the local language. In the latter case, a translation of the main elements in the language of the contract might have to be provided upon request of the Contracting Authority, globally in an annex or in the documents, whichever is more convenient for the Beneficiary and which improves the readability of the document.

2.5. Reports shall be submitted with the payment requests, according to Article 15. If the Coordinator fails to provide any report or fails to provide any additional information requested by the Contracting Authority within the set deadline without an acceptable and written explanation of the reasons, the Contracting Authority may terminate this Contract according to Article 12.2 (a) and (f).	The Coordinator has to inform the Contracting Authority of any delay it may have in submitting the reports. If a report is submitted late without justification, the Contracting Authority has the right to terminate the contract and ask for the reimbursement of the amounts unduly paid. General rule for submission of reports: - interim reports: within 60 days following the end of the reporting period - final reports: within 3 months after the end of the implementation period (as defined in Article 2 of the Special Conditions) or 6 months if the Coordinator does not have its headquarters in the country where the Action is implemented. See art. 15 for more details and specific cases. The Special Conditions also set out additional reporting requirements.

19.2.3. Article 3 - Liability

Text of the Article	Guidelines
3.1. The Contracting Authority cannot under any circumstances or for any reason whatsoever be held liable for damage or injury sustained by the staff or property of the Beneficiary(ies) while the Action is being carried out or as a consequence of the Action. The Contracting Authority cannot, therefore, accept any claim for compensation or increases in payment in connection with such damage or injury	The fact that the EU is financially supporting the Action does not transfer any responsibility for circumstances resulting from the implementation of the Action to the EU. This responsibility rests entirely on the Beneficiary(ies).

3.2. The Beneficiary(ies) shall assume sole liability towards third parties, including liability for damage or injury of any kind sustained by them while the Action is being carried out or as a consequence of the Action. The Beneficiary(ies) shall discharge the Contracting Authority of all liability arising from any claim or Action brought as a result of an infringement of rules or regulations by the Beneficiary(ies) or the Beneficiary(ies)'s employees or individuals for whom those employees are responsible, or as a result of violation of a third party's rights.	

19.2.4. Article 4 - Conflict of interests

Text of the Article	Guidelines
4.1. The Beneficiary(ies) shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of this Contract. Such conflict of interests may arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest.	According to Article 57 of the Financial Regulation there is a conflict of interest in circumstances where the impartial and objective exercise of the functions of a party responsible for the implementation of the budget, or an internal auditor, is compromised for reasons involving family, emotional life, political or national affinity, economic interest, or any other shared interest with the Beneficiary(ies). In other words, a conflict of interest is any event influencing the capacity of the applicants or the Beneficiary(ies) to give an objective and impartial professional opinion. The rules on prevention and prohibition of conflicts of interest are entirely applicable to implementation contracts and to financial support awarded within the grant.

4.2. Any conflict of interests which may arise during performance of this Contract must be notified in writing to the Contracting Authority without delay. In the event of such conflict, the Coordinator shall immediately take all necessary steps to resolve it.	
4.3. The Contracting Authority reserves the right to verify that the measures taken are appropriate and may require additional measures to be taken if necessary.	
4.4. The Beneficiary(ies) shall ensure that its staff, including its management, is not placed in a situation which could give rise to conflict of interests. Without prejudice to its obligation under this Contract, the Beneficiary(ies) shall replace, immediately and without compensation from the Contracting Authority, any member of its staff in such a situation.	

19.2.5. Article 5 - Confidentiality

Text of the Article	Guidelines
5.1. Subject to Article 16, the Contracting Authority and the Beneficiary(ies) undertake to preserve the confidentiality of any information, notwithstanding its form, disclosed in writing or orally in relation to the implementation of this Contract and identified in writing as confidential until at least 5 years after the payment of the balance.	
5.2. The Beneficiary(ies) shall not use confidential information for any aim other than fulfilling their obligations under this Contract unless otherwise agreed with the Contracting Authority.	

5.3. 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.	

19.2.6. Article 6 - Visibility

Text of the Article	Guidelines
6.1. Unless the European Commission agrees or requests otherwise, the Beneficiary(ies) shall take all necessary steps to publicise the fact that the European Union has financed or co-financed the Action. Such measures shall comply with the Communication and Visibility Manual for Union External Actions laid down and published by the European Commission, that can be found at: http://ec.europa.eu/europeaid/work/visibility/documents/communication_and_visibility_manual_en.pdf.	The Beneficiary(ies) shall make sure to publicise the fact that the EU has funded the Action. The Beneficiary can request a derogation from the visibility obligations in special circumstances and notably in situations where a high profile could put the staff employed in the Action at risk. Any request for derogation from the visibility obligations listed in article 6 shall be agreed with the Contracting Authority in the Special Conditions and included in the communication plan. The Visibility Manual contains requirements and templates for briefings, written materials, press conferences, EU logos, display panels, promotional items and other tools that should be used to highlight the EU funding. Failure to follow the contractual provisions on visibility may be a ground of termination according to article 12 of these General Conditions.

6.2. The Coordinator shall submit a communication plan for the approval of the European Commission and report on its implementation in accordance with Article 2.	The visibility and communication plan has to be submitted for the approval of the project manager during the inception phase. Guidelines and the template can be found in the section 2.3 of the Communication and Visibility Manual. The communication plan has to contain a budget for the visibility, even for small projects. A report on the visibility and communication activities has to be included in all interim and final reports.
6.3. In particular, the Beneficiary(ies) shall mention the Action and the European Union's financial contribution in information given to the final recipients of the Action, in its internal and annual reports, and in any dealings with the media. It shall display the European Union logo wherever appropriate.	The use of the EU's logo is encouraged as often as possible. The EU's contribution should also be mentioned in internal reports, annual reports, and to the media, where appropriate. The logo and the sentence mentioned in Article 6.4 shall be included in all publications produced in the framework of the Action supported by the EU: that is to say both if the publications are paid with the EU grant money or if they are produced using the Beneficiary's own funds or co-financing funds. The logo information can be found at: http://ec.europa.eu/europeaid/work/visibility/documents/communication_and_visibility_manual_en.pdf

6.4. Any notice or publication by the Beneficiary(ies) concerning the Action, including those given at conferences or seminars, shall specify that the Action has received European Union funding. Any publication by the Beneficiary(ies), in whatever form and by whatever medium, including the internet, shall include the following statement: 'This document has been produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of < Beneficiary(ies)'s name > and can under no circumstances be regarded as reflecting the position of the European Union.'	All publications financed by the EU shall contain the standard disclaimer foreseen in art 6.4. More details can be found in Annex 2, section 6 of the Communication and Visibility Manual.
6.5. The Beneficiary(ies) authorises the Contracting Authority and the European Commission (where it is not the Contracting Authority) to publish its name and address, nationality, the purpose of the grant, duration and location as well as the maximum amount of the grant and the rate of funding of the Action's costs, as laid down in Article 3 of the Special Conditions. Derogation from publication of this information may be granted if it could endanger the Beneficiary(ies) or harm their interests.	In order to obtain derogation from the publication of this information, the Coordinator shall submit a justification to the Contracting Authority before the signature of the contract.

19.2.7. Article 7 - Ownership/use of results and assets

Text of the Article	Guidelines
7.1. Unless otherwise stipulated in the Special Conditions, ownership of, and title and intellectual and industrial property rights to, the Action's results, reports and other documents relating to it will be vested in the Beneficiary(ies).	The Beneficiary(ies) is the owner of any intellectual or industrial right developed in the Action such as brevets and patents, and royalties etc. However, the Contracting Authority and the Commission can use, free of charge, all of the documents produced in the Action.

7.2. Without prejudice to Article 7.1, the Beneficiary(ies) grant the Contracting Authority (and the European Commission where it is not this Contracting Authority) the right to use freely and as it sees fit, and in particular, to store, modify, translate, display, reproduce by any technical procedure, publish or communicate by any medium all documents deriving from the Action whatever their form, provided it does not thereby breach existing industrial and intellectual property rights.	Financial and narrative reports shall be used in the strictest confidentiality.
7.3. The Beneficiary(ies) shall ensure that it has all rights to use any pre-existing intellectual property rights necessary to implement this Contract.	
7.4. In case natural, recognizable persons are depicted in a photograph or film, the Coordinator shall, in the final report to the Contracting Authority, submit a statement of these persons giving their permissions for the described use of their images. The above does not refer to photographs taken or films shot in public places where random members of the public are identifiable only hypothetically and to public persons acting in their public activities.	

7.5. Where a Beneficiary(ies) does not have its headquarter(s) in the country where the Action is implemented and unless otherwise specified in the Special Conditions, its equipment, vehicles and supplies paid for by the Budget for the Action shall be transferred to any local Beneficiary(ies) and/or to any local affiliated entity(ies) and/or to the final beneficiaries of the Action, at the latest when submitting the final report. Copies of the proofs of transfer of any equipment and vehicles for which the purchase cost was more than EUR 5000 per item, shall be attached to the final report. Proofs of transfer of equipment and vehicles whose purchase cost was less than EUR 5000 per item shall be kept by the Beneficiary(ies) for control purposes.	Before the end of the Action everything that is bought with the Budget of the Action (and therefore also with co-financing funds) shall be transferred to the local Beneficiary(ies) and/or the local Affiliated Entity(ies) and/or to the final Beneficiaries of the Action. This obligation doesn't apply to Beneficiary(ies) whose headquarters is in the Country where the Action is implemented. Proof of this transfer shall be included in the final report only for items whose purchase cost is above EUR 5 000. Proof of the transfer for items whose purchase cost is equal or below EUR 5 000 shall not be included in the final report but, instead, they shall be kept by the Beneficiary(ies) as they might be later requested and checked by external auditors. Any item which is not transferred by the Beneficiary(ies) before the end of the Action shall be considered as ineligible expenditure and disallowed. The information on transferring ownership of the aforementioned items shall be provided in accordance with the templates foreseen in Annex IX of the Special Conditions.

19.2.8. Article 8 - Evaluation/monitoring of the action

Text of the Article	Guidelines

8.1. If the European Commission carries out an interim or ex post evaluation or a monitoring mission, the Coordinator shall undertake to provide it and/or the persons authorised by it with any document or information which will assist with the evaluation or monitoring mission, and grant them the access rights described in Article 16.	The Beneficiary(ies) shall provide access to the European Commission or its external monitors to any documents or information relating to the Action. This can also be requested after the end of the implementation period.
8.2. If either the Beneficiary(ies) or the European Commission carries out or commissions an evaluation in the course of the Action, it shall provide the other with a copy of the evaluation report.	All mid-term and final evaluation reports produced by the Beneficiary(ies) throughout the Action have to be shared with the European Commission.

19.2.9. Article 9 - Amendment of the contract

Text of the Article	Guidelines
9.1. Any amendment to this Contract, including the annexes thereto, shall be set out in writing. This Contract can be modified only during its execution period.	Any amendment of the Contract shall be done in writing according to the procedures foreseen in Articles 9.3 and 9.4. Oral arrangements for modifications shall never legally bind the parties. Execution period means the period during which the contract is legal valid i.e. from contract signature until final payment, and in no event later than 18 months after the end of the Implementation period. Implementation period means the period during which the Action is implemented.

9.2. The amendment may not have the purpose or the effect of making changes to this Contract that would call into question the grant award decision or be contrary to the equal treatment of applicants. The maximum grant referred to in Article 3.2 of the Special Conditions may not be increased.	No amendment to the Grant Contract (either unilateral or by addendum) may call into question the initial award of the grant or the equal treatment of applicants. Unequal treatment of the applicants means different treatment of Beneficiary(ies) which are in the same situation. For this reason, the conditions of the Call for Proposals should be followed strictly when making amendments, thus avoiding situations where unequal conditions are applied to grants awarded under the same call. The maximum EU contribution and percentage of eligible or accepted costs financed by the Contracting Authority may never be increased.
9.3. If an amendment is requested by the Beneficiary(ies), the Coordinator shall submit a duly justified request to the Contracting Authority thirty days before the date on which the amendment should enter into force, unless there are special circumstances duly substantiated and accepted by the Contracting Authority.	<u>Amendment by addendum</u> As a general rule, amendments should be requested only during the implementation period of the Action. However, the Grant Contract might be modified also during its execution period. An amendment request shall be duly substantiated and in particular shall include all information necessary for the Contracting Authority for taking an informed decision on this matter including (but not limited to): the reasons behind the amendment and the impact of the amendment on the implementation of the Action (i.e. and most notably on the activities and budget of the Action). The Coordinator shall present together with its request, or in response to a demand for clarification by the Contracting Authority, any document available relating to the proposed amendment.

	An amendment shall be requested at least 30 days before it occurs. However, whenever possible, as the Contracting Authority may take longer to assess the amendment, it is recommend to send a request for amendment as early as possible. The amendment to the Grant contract shall be signed by the same parties who signed the initial contract, i.e. the Coordinator and the Contracting Authority. The Coordinator bears the financial risk for any costs incurred in relation with this amendment until the addendum has been signed. Extension of the implementation period This applies when the duration of the Action is extended. A request extending the implementation date of the Action never entails an increase of the EU contribution (no cost extension) and always requires an addendum.

9.4. Where the amendment to the Budget or Description of the Action does not affect the basic purpose of the Action and the financial impact is limited to a transfer between items within the same main budget heading including cancellation or introduction of an item, or a transfer between main budget headings involving a variation of 25% or less of the amount originally entered (or as modified by addendum) in relation to each concerned main heading for eligible costs, the Coordinator may amend the budget and inform in writing without delay the Contracting Authority accordingly. This method may not be used to amend the headings for indirect costs, for the contingency reserve, for in-kind contributions or the amounts or rates of simplified cost options.	Unilateral amendments As a general rule, amendments should be reported only during the implementation period of the Action. However, the Grant Contract might be modified also during its execution period. The Coordinator shall, without any delay, inform in writing the Contracting Authority of any amendment according to art. 9.4 . "Without delay", shall be given a very strict interpretation as the Coordinator is under the legal obligation to keep the Contracting Authority fully and timely updated, all the more, when important changes/variations are proposed. As an example, if the Coordinator is about to send a report, the Coordinator shall include the proposed change already in this report. If there are several months until the next report, the Coordinator shall, as soon as possible, inform in writing the Contracting Authority of the proposed change.

	This is not only in order to comply with the Coordinator's legal obligation to keep the Contracting Authority fully and timely updated but it is also in the interest of the Coordinator who bears the financial responsibility for changes which the Contracting Authority might refuse (see below paragraph). Where the amendment to the Budget or Description of the Action is fully compliant with the conditions listed in Article 9.4, the letter /report sent by the Coordinator informing the Contracting Authority of the amendment is, in itself, sufficient for amending the Budget or Description of the Action: a specific approval from the Contracting Authority is therefore not necessary to officialise it. However, if the Contracting Authority believes that the conditions listed in Article 9.4 have not been respected, it shall inform the Coordinator by letter (possibly within 30 days from the receipt of the letter or report of the Coordinator) of its decision to refuse the amendment. In such cases the proposed amendment shall have no effect and any cost relating to this amendment shall be considered as ineligible.

	The most common unilateral amendments are the following: 1) Unilateral amendment: budget amendment The budget attached to the Grant Contract shall be respected. However, the Beneficiary(ies) can benefit from a certain flexibility within the budget, as long as the "basic purpose" of the Action is not affected and the change does not call into question the initial award of the grant/equal treatment of applicants. It is difficult to provide here a detailed description of what the basic purpose of the Action is, as it assumes different meanings according to the specificities of the Action and therefore requires a case by case analysis. However, as a general rule, any modifications of the objectives of the Action, of the target groups, of the location, of the activities or of the Action's sustainability, results and indicators etc. is likely to affect the basic purpose of the Action and may therefore be refused by the Contracting Authority.

	In case of doubt, it is strongly recommended to check beforehand with the Contracting Authority that the proposed modifications do not impact the basic purpose of the Action. As long as the basic purpose of the Action is not affected, the Beneficiary(ies) can: make transfers between items or introduce new items within the same budget heading. The term budget "heading” has to be understood as the main budget headings of the direct costs, i.e. the headings number 1 (human resources), 2 (travel), 3 (equipment and Supplies), 4 (local offices), 5 (other costs, services) and 6 (other), and not as any of the sub-headings or items. transfer part of the budget from one heading to another (from 1 to 6 for instance) as long as this transfer does not imply a variation (both increase and decrease) of more than 25% of the headings concerned by such transfer. Unilateral amendment cannot be used to amend the indirect costs, the contingency reserve, in-kind contributions, or the amounts or rates of simplified cost options.

	To calculate the amount of the variation it should be noted that: - the 25% variation is calculated on both the original value of the heading where the funds are taken from and the original value of the heading where the funds are to be added; - successive unilateral modifications to the budget shall be taken into account in a cumulative way. This means for instance that, if a budget heading was already increased with an unilateral modification by 20% of its initial value (as set out in the original Budget of the Action or as modified by an addendum), that heading can be further increased by no more than 5% of its initial value (thus reaching in total the limit of 25% of its initial value).. When the cumulative variations of a given budget heading exceed 25% of the budget heading's value, it is necessary to process a formal budget revision (through an addendum according to article. 9.3). Any amount in excess of the 25% ceiling which is not covered by an addendum is not eligible for EU-financing.

	When informing the Contracting Authority, a comparative version of the budget with the cumulative changes already made shall also be submitted. Caution should always be used in making any modification to the human resources allocated to the project. In this case and in all doubtful cases, it is advisable to discuss and, if possible, agree in writing with the Contracting Authority beforehand. <u>2) Unilateral amendment: changes in the Description of the Action</u> This amendment can only be requested during the implementation period of the Action. Changes in the Description of the Action are allowed as long as they do not affect the basic purpose or do not call into question the initial award of the grant/equal treatment of applicants. Unilateral amendment affecting the basic purpose of the action might lead to a termination of the Grant contract by the Contracting Authority in accordance with article 12.2 of the General Conditions.
9.5. Changes of address, bank account or auditor may simply be notified by the Coordinator. However, in duly substantiated circumstances, the Contracting Authority may oppose the Coordinator's choice.	Such notification can only be done in writing. A confirmation letter from the Contracting Authority is not necessary to officialise a change of address, bank account, or auditor. The Contracting Authority may however oppose the Coordinator's choice for justified reasons notified to the Coordinator (where possible) within 30 days from the receipt of the letter of the Coordinator.

9.6. The Contracting Authority reserves the right to require that the auditor referred to in Article 5.2 of the Special Conditions be replaced if considerations which were unknown when this Contract was signed cast doubt on the auditor's independence or professional standards.	

19.2.10. Article 10 - Implementation

19.2.10.1. Implementation Contracts

Text of the Article	Guidelines
10.1. If the Beneficiary(ies) have to conclude implementation contracts with contractors in order to carry out the Action, these may only cover a limited portion of the Action and shall respect the contract-award procedures and rules of nationality and origin set out in Annex IV of this Contract.	Annex IV is a key document for the implementation of grant contracts. It describes the principles and procedures to be observed by the grant Beneficiary(ies) (and their affiliated entities if mentioned in the contract) concerning the procurement needed for the implementation of the action. It has to be stressed that Chapters 3, 4 and 5 of the PRAG do not apply to procurement within a grant contract (as stated in point 1 of the PRAG), unless the grant Beneficiary explicitly and voluntarily decides to use it along with its templates. Its relevance and pertinence can be substantiated by the fact that the largest source of ineligible expenditure identified by auditors in grant contracts stems from the non-respect of provisions set out Annex IV. It is therefore of utmost importance that the grant Beneficiary(ies) is fully acquainted with this Annex. It is advisable for the Contracting Authority to stress this fact whenever possible (informative session during a Call for Proposals, informative session for grant Beneficiaries after a call, during monitoring missions, in meetings with Beneficiaries, etc.).

	Article 10.1 of the GC is making reference to Articles 1 and 2 of Annex IV. The General Principles mentioned in Article 1, transparency and fair competition have to be respected in the conclusion of any procurement contract within a grant. No conflicts of interest should take place. The estimated value of a contract may not be determined with a view to evading the requirements laid down in the Annex, nor may a contract be split up artificially for that purpose.
	The contract award criteria are clear: - Most cost-effective (best value for money or most economically advantageous) in the case of service contracts - Cheapest price for works and supplies contracts (in duly justified cases where there is a big component of after-sales services in the contract, the most cost-effective criteria may be used).
	The ex-post checks to be carried out by Contracting Authority (and the European Commission when it is not the CA) are a very useful tool to see whether procurement rules are being applied properly by the grant Beneficiary(ies). Such checks become even more relevant at early stages of implementation because they will allow correcting potential deviations from Annex IV, preventing potential ineligible expenditure during the rest of the lifespan of the contract. Grant Beneficiaries are of course expected to contribute to these checks by providing all the necessary information as per Article 16.4 GC. The existing methodology on the monitoring of projects (with emphasis on the procurement on the basis of Annex IV) may be followed.

	Rules of nationality and origin The rules of nationality and origin (Article 2 of Annex IV) have to be respected rigorously by the grant Beneficiary(ies). Even if the rest of a procurement procedure described in Annex IV has been observed, a deviation from the rules of nationality and/origin will render the expenditure ineligible. The nationality rule refers to the nationality of the service providers, suppliers, and contractors. It applies to all service, works, and supply contracts. The rule of nationality does not apply to experts proposed by service providers for service contracts financed by the grant but it does apply to the service provider itself. In works contracts, it applies to all the materials, goods, and components to be incorporated or to form part of the permanent works. Goods used during the execution of the Contract which are purchased by the contractor and become its property are not subject to the rule of origin
	The rule of origin is also applicable to procurement of second-hand items, if any, within a grant contract. The rule of origin refers to the origin of goods and equipment. Goods originating in a country shall be those wholly obtained or produced in that country. Goods whose production involves more than one country shall be deemed to originate in the country where they underwent their last substantial transformation.

	For equipment and vehicles with a unit cost exceeding EUR 5 000, the origin must be proved by a “certificate of origin” that the grant Beneficiary(ies) should request from the supplier when making the purchase. The certificate of origin must be made out by the competent authorities of the country of origin of the supplies or supplier (normally the Chambers of Commerce). The Commission may request, in case of doubt regarding the certificates of origin provided by the grant Beneficiary(ies), additional documentation on the origin of goods (including a cost breakdown prepared by the Beneficiary(ies) for each item in question).
	Both the nationality and origin rules must be complied with when making any purchases of goods or equipment as part of a project co-financed by the EU, even for the goods that are not covered by the EU co-financing in the project's accounts (EC rules apply to the entire action, no matter the co-financing level). In exceptional and well justified cases, the Coordinator, on behalf of all beneficiaries, may seek a derogation from the Contracting Authority on the nationality and/or origin rules. These requests have to be made in writing and accompanied by the necessary justification. The derogation has to be granted in advance and before the procurement procedure is launched (otherwise the amount involved would be considered as ineligible).

	Procurement rules The grant Beneficiary(ies) is allowed to use its own tender documents and templates. Tender documents have to be drafted according to best international procurement practice. If the Beneficiary(ies) do not have their own documents, they can use the ones in the Practical Guide on EU contract procedures. Beneficiary(ies) may also opt to use the PRAG documents even if they have their own. Indeed, on a voluntary basis they can also decide to align completely with the procedures described in the PRAG (for instance, in case of doubt or in case they feel more confident using them).
	Grant Beneficiary(ies) have to publish their procurement notices in all appropriate media in the cases mentioned in Annex IV. The instructions concerning the evaluation committees have to be fully adhered to. Annex IV states clearly in Articles 4, 5 and 6 the thresholds defining the procedure to be used (they apply also for EDF grants).

	In the case of procurement of EUR 60 000 or less (in all cases: works, supplies and services), Annex IV allows the Beneficiary(ies) to use its own procedures, while respecting the basic principles. In case that the Beneficiary(ies) doesn't have clear procedures, it may decide to use the ones defined in the PRAG (i.e. single tender for EUR 20 000 or less, and competitive negotiated procedure for contracts of EUR 60 000 or less but more than EUR 20 000).Finally, Annex IV lists the cases where the Beneficiary(ies) may decide to use a negotiated procedure on the basis of a single tender. Given the particular nature of this procedure and the need to fit accurately in one of the cases listed, it is desirable for the Beneficiaries to seek an opinion from the Contracting Authority in these cases before undertaking it. '
	In all cases, grant Beneficiary(ies) must keep all documents related to procurement (procurement notices, tender dossiers, bids received, any derogation obtained, evaluation/negotiation reports, etc.) in order to prove compliance with Annex IV. As said at the beginning of this Article, non-compliance with Annex IV is the most recurrent source of ineligible expenditure in grant contracts and frequently the amounts involved are quite significant.

10.2. The Beneficiary(ies) shall also ensure that contractors awarded an implementation contract comply with Articles 3, 4, 5, 6, 7, 8 and 16 of this Contract.	In all the implementation contracts awarded, it is important for grant Beneficiaries to insert the relevant clauses to ensure the respect of the obligations stemming from these Articles (liability, conflict of interest, confidentiality, visibility, ownership/use of results and assets, evaluation and monitoring, accounts and technical and financial checks). These obligations for the contractors concerns only the implementation contracts concluded with the Grant beneficiary(ies) in the context of the Grant contract. The "visibility obligation" is to be intended as a reminder for the Grant Beneficiary - when needed - to insert the necessary requirements in the terms of reference of the contract. *Example: in the framework of a contract for the printing of 1.000 booklets to be distributed, the Grant Beneficiary has to require that they display the appropriate visibility.*
10.3. The Coordinator shall provide in its report to the Contracting Authority a comprehensive and detailed report on the award and implementation of any contract awarded under article 10.1.	In each interim narrative report (2.3) and in the final narrative report (2.8), the grant Beneficiary(ies) has to provide information on the procurement carried out in each period, detailing the amount, the procedure followed and the name of the contractor.

19.2.10.2. Financial support to third parties

Text of the Article	Guidelines

10.4. In order to support the achievement of the objectives of the Action, and in particular where the implementation of the Action requires financial support to be given to third parties, the Beneficiary(ies) may award financial support if so provided by the Special Conditions.	It may happen that the implementation of the action involves the award by the Beneficiary of financial support to third parties (FS). This is allowed provided that the objectives or results to be obtained are clearly detailed in the proposal and that the following conditions are fulfilled: 1) the Contracting Authority has verified that the Coordinator offers adequate guarantees as regards the recovery of amounts due. Indeed, in the event of a recovery order at the end of the project, the Contracting Authority exclusively turns to the Coordinator, who then may be asked to reimburse amounts which the Beneficiary(ies) or Affiliated Entity(ies) have transferred as financial support. A thorough assessment of the Coordinator's financial capacity is therefore recommended prior to awarding a EU grant involving FS.

	2) the Beneficiary(ies) of the EU grant may not exercise any discretionary power in granting financial support to third parties. In order to ensure this, the Call for Proposals requires that the proposals include: - a fixed and exhaustive list of the different types of activities for which a third party may receive financial support, - the definition of the persons or categories of persons which may receive financial support, - the criteria for awarding financial support, - the maximum amount to be granted to each third party and the criteria for determining it. 3) the Beneficiary(ies) must ensure that recipients of the financial support allow the Contracting Authority, the Commission, OLAF, and the Court of Auditors to exercise their powers of control on documents, information, even stored on electronic media, or on the final recipient's premises. (ref art.10.8 General Conditions)

10.5. The maximum amount of financial support shall be limited to EUR 60 000 per each third party, except where the main purpose of the Action is to redistribute the grant.	For actions financed under the EDF, the financial support may not be the primary aim of the EU grant, therefore the limit of EUR 60 000 per each third party may never be exceeded under the EDF. Financial support is an activity carried out within the Contract, and may be implemented by all Beneficiaries, as well as Affiliated Entities, provided that the mandatory conditions stated in the contract are fulfilled. Indeed, the cost eligibility conditions applicable to Affiliated Entities are the same as those applicable to the Beneficiaries. So they may award financial support to third parties under the same conditions as Beneficiaries (make sure that all the minimum elements required in Annex I are respected).
	The threshold for the financial contribution to third parties is 60 000 per third party ("sub-grantee" or recipient of FS). Pay attention not to get confused between simplified cost options (the Beneficiaries themselves can claim up to EUR 60 000 each; see. Art. 14.5) and the FS they give to third parties (EUR 60 000 per recipient). In fact when a Beneficiary pays FS on the basis of a "global amount" (which can be assimilated to simplified cost options), this amount is not related to the simplified cost options that may have been agreed in the contract (for the Beneficiary vis a vis the Contracting Authority it is just like any other actual cost incurred - see art. 10.6).

	Example: one lead applicant and 2 co-applicants and 3 Affiliated Entities. *SIMPLIFIED COST OPTIONS: maximum allowed would be 3* 60 000 (to be used by each Beneficiary, including their Affiliated Entity(ies)).* *FINANCIAL SUPPORT: maximum established according to the description of the action, which could result for instance in 5 recipients receiving up to 60 000 each.* There is absolutely no relation between the 2 amounts. The guidelines of the Call for Proposal may, as appropriate, restrict the scope of the FS, for instance setting a lower maximum amount, or targeting only specific categories etc.
10.6. The Description of the Action, in conformity with the relevant instructions given in this regard by the Contracting Authority, 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 parties recipient of this financial support, including the criteria for determining its exact amount, shall also be specified. The Beneficiary(ies) shall respect the rules of nationality and origin set out in Annex IV of this Contract.	It is essential for the eligibility of FS, that all these mandatory conditions are strictly defined in the contract (notably in Annex I), in compliance with the Guidelines for Applicants and of any conditions or restrictions set out: (i) the objectives and results to be obtained with the financial support (ii) the different types of activities eligible for financial support, on the basis of a fixed list (iii) the types of persons or categories of persons which may receive financial support (iv) the criteria for selecting these entities and giving the financial support (v) the criteria for determining the exact amount of financial support for each third entity, and (vi) the maximum amount which may be given.

	(iii) The eligible categories of persons are not necessarily those eligible under the Call for Proposals with regards to Beneficiary(ies) and Affiliated Entity(ies): usually the basic acts and Annex IV do not impose any specific nationality rule on recipients of FS. In fact it is the Call for Proposal and/or the contract 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. (iv) the modalities through which the FS is granted (e.g. following a call for proposals, direct award etc.) must also be specified.
	The FS may take the form of simplified cost options. For the sake of simplification, it is even advised to agree with the Beneficiary(ies) in the description of the action on unit or lump sum amounts, together with the criteria for payment of those 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, the thresholds 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 FS 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, 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 the objective of the action clearly requires this type of financial support to third parties. Cash transfers are allowed provided the Beneficiary can prove payment (for example a paper from the sub-grantee or recipient acknowledging receipt of the cash amount), since the costs must be verifiable to be eligible.
	NB: "unconditional", does not mean that the conditions for giving financial support are not established in the contract. This would not be acceptable. It is essential that the Call for Proposals clearly laid down the conditions for accepting as eligible the costs of financial support to third parties and the description of the action as proposed by the applicants shall then contain all the information required above (Art.10.4).
	"Conditional" transfers are also possible (e.g. seed money to a micro-enterprise subject to establishment of favourable working conditions or recruitment of women). The financial support may also take the form of a prize awarded following a contest organised by the Beneficiary.

10.7. The Coordinator shall provide in its report to the Contracting Authority a comprehensive and detailed report on the award and implementation of any financial support given. These reports should provide, amongst other, information on the award procedures, on the identities of the recipient of financial support, the amount granted, the results achieved, , the problems encountered and solutions found, the activities carried out as well as a timetable of the activities which still need to be carried out.	Keep in mind that the FS is justified if given in order to support the achievement of the objectives of the Action. The FS has to be necessary for the implementation of the Action, and embedded in its design. Refer to Art. 16.9 on supporting documents. From a budgetary point of view, there is no specific rule for presenting FS: depending on the amounts and scope, it could fit in different budget lines. In any case, no discretion can be exercised by the Beneficiary, and the FS must be thoroughly under control and must be clearly identifiable in the budget. The Call for Proposal can set specific requirements in the guidelines, and rather have it all in one line for instance.

10.8. The Beneficiary(ies) shall also ensure that third parties awarded financial support comply with Articles 3, 4, 5, 6, 7, 8 and 16 of this Contract.	The third parties receiving financial support from the Beneficiary(ies) are not subject to the same eligibility criteria as those applicable to Beneficiaries and Affiliated Entity(ies) under the Call for Proposals. Likewise, 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 contract). FS should be conceived in such a way as to be an efficient and easy tool for the achievement of the purpose of the action. This does not exempt the need to define in the contract the categories of persons who may receive financial support from the Beneficiary(ies) and the maximum amount of the financial support together with the way the exact amount is calculated (see above Art.10.4).

19.2.11. Article 11 - Extension and suspension

19.2.11.1. Extension

Text of the Article	Guidelines

11.1. The Coordinator shall inform the Contracting Authority without delay of any circumstances likely to hamper or delay the implementation of the Action. The Coordinator may request an extension of the Action's implementation period as laid down in Article 2 of the Special Conditions in accordance to Article 9. The request shall be accompanied by all the supporting evidence needed for its appraisal.	The implementation date of an Action is defined in the Special conditions. Any extension of the implementation period shall be requested during the implementation period, it shall be the object of a contract addendum according to article 9.3. and it shall not entail any increase in the EU contribution.

19.2.11.2. Suspension by the Coordinator

Text of the Article	Guidelines
11.2. The Coordinator may suspend implementation of the Action, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. The Coordinator shall inform the Contracting Authority without delay, stating the nature, probable duration and foreseeable effects of the suspension.	The implementation of the Action may become temporarily impossible or undesirable due to exceptional circumstances, most notably of force majeure. In order to qualify as exceptional the event or situation in question shall, notably, not be part or be attributable to the usual risks accompanying the Beneficiary's(ies') activity. What is considered as exceptional circumstances depend on a case by case assessment: however, it is likely that the vast majority of cases qualifying as exceptional circumstances according to Art 11.2. fall within the broader concept of force majeure. A definition of force majeure is provided in in article 11.8 of these General Conditions.

	In exceptional/force majeure circumstances, the Coordinator is unilaterally entitled to suspend the implementation of the Action. The suspension of the implementation of the Action implies that the Beneficiary(ies) stops carrying out the Action for a specific period of time. During the suspension of the implementation period of the Action the Beneficiary(ies) is not entitled to incur eligible costs as it does not, by definition, implement activities that could generate them. As a suspension of the implementation period in principle implies that the costs incurred during the suspension are not eligible, the Coordinator shall, without any delay, agree in writing with the Contracting Authority on any eventual fixed and unavoidable costs that could nevertheless remain eligible during the suspension (e.g. office rent, certain staff costs etc.).
	The Coordinator shall inform the Contracting Authority as soon as possible without unjustified delays in case it intends to suspend the implementation of the Action. The Coordinator shall provide all information necessary for the Contracting Authority for taking an informed decision on this matter including but not limited to: a detailed description of the circumstances in question and their impact on the implementation of the Action, the measures taken to minimise damages (including their nature, probable duration etc.) and the foreseeable date of resumption of the implementation of the Action, etc

	Such information shall be submitted in writing through a registered letter with an acknowledgement of receipt or an equivalent. Using such a means of communication ensures there is evidence of the receipt by the other party, and thus a certainty regarding the period within which the Beneficiary(ies) is entitled to incur eligible costs. In case of doubts, the Contracting Authority shall request any proof deemed necessary to show that such exceptional/force majeure circumstances indeed existed. Nevertheless, the suspension of the implementation period of the Action takes effect from the moment the Contracting Authority is informed about the suspension and not after such a verification exercise has been completed.

11.3. The Coordinator or the Contracting Authority may then terminate this Contract in accordance with Article 12.1 . If the Contract is not terminated, the Beneficiary(ies) shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow, informing the Contracting Authority accordingly.	During the suspension, the Beneficiary(ies) shall take all possible measures for minimising the damage due to exceptional/force majeure circumstances. When an exceptional/force majeure circumstance stops hindering the implementation of the Action, and therefore it is possible for the Beneficiary(ies) to resume implementation, the Coordinator should inform the Contracting Authority as soon as possible, without any unjustified delay. If it is practically impossible to resume the implementation of the Action as initially planned then the possibility to modify the Action in light of the new implementing conditions shall be explored. In this assessment, it shall be carefully checked to what extent an amendment of the Grant Contract is possible without putting into question the award decision or the equality of treatment. If an amendment goes against the main principles for amendments, the Grant contract shall be terminated (or the decision repealed). If the implementation can no longer be resumed or it cannot be resumed effectively or appropriately, then the Grant Contract might be terminated in accordance with Article 12.1 of these General Conditions.

19.2.11.3. Suspension by the Contracting Authority

Text of the Article	Guidelines

11.4. The Contracting Authority may request the Beneficiary(ies) to suspend implementation of the Action, or any part thereof, if exceptional circumstances, notably of force majeure, make such implementation excessively difficult or dangerous. To this purpose, the Contracting Authority shall inform the Coordinator stating the nature and probable duration of the suspension.	In exceptional/force majeure circumstances, the Contracting Authority shall decide whether to request the Coordinator to suspend the implementation of the Action. The suspension of the implementation of the Action implies that the Beneficiary(ies) will stop carrying out the Action for a specific period of time. During the suspension of the implementation period of the Action the Beneficiary(ies) is not entitled to incur eligible costs as it does not, by definition, implement activities that could generate them. As a suspension of the implementation period in principle implies that the costs incurred during the suspension are not eligible, the Coordinator shall, without any delay, agree in writing with the Contracting Authority on any eventual fixed and unavoidable costs that could nevertheless remain eligible during the suspension (e.g. office rent, certain staff costs etc.).

11.5. The Coordinator or the Contracting Authority may then terminate this Contract in accordance with Article. 12.1. If the Contract is not terminated, the Beneficiary(ies) shall endeavour to minimise the time of its suspension and any possible damage and shall resume implementation once circumstances allow and after having obtained the approval of the Contracting Authority.	During the suspension, the Beneficiary(ies) shall take all possible measures for minimising the damage due to exceptional/force majeure circumstances. The Beneficiary(ies) shall resume timely the implementation of the Action, as soon as the exceptional/force majeure circumstances allow it. The Coordinator shall, however, first have received a written prior approval by the Contracting Authority for resuming the implementation of the Action. If it is practically impossible to resume the implementation of the Action as initially planned then the possibility to modify the Action in light of the new implementing conditions shall be explored. In this assessment, it shall be carefully checked to what extent an amendment of the Grant Contract is possible without putting into question the award decision or the equality of treatment. If an amendment goes against the main principles for amendments, the Grant contract shall be terminated (or the decision repealed). If the implementation can no longer be resumed or it cannot be resumed effectively or appropriately, then the Grant Contract might be terminated in accordance with Article 12.1 of these General Conditions.

11.6. The Contracting Authority may also suspend this Contract or the participation of a Beneficiary(ies) in this Contract when, or, if necessary to verify, that: a) the grant award procedure or the implementation of the Action have been subject to substantial errors, irregularities or fraud; b) the Beneficiary(ies) have breached any substantial obligation under this Contract.	The Contracting Authority shall suspend the Grant Contract or the participation of a Beneficiary(ies) in the Grant Contract when it has evidence that the circumstances in points a) or b) have occurred. In addition, the Contracting Authority shall suspend the Grant Contract when, for objective and well justified reasons, it deems necessary to verify whether, presumably, the circumstances in points a) or b) have occurred. In this latter case, however, in light of the burdensome consequences of a suspension, the Contracting Authority shall preferably, whenever possible, first give notice to the Coordinator indicating its intention to suspend the Contract, as well as, of the specific grounds/reasons motivating the suspension. The Contracting Authority shall then leave the Coordinator a reasonable time (30 days) to react and present its comments/objections to the intended suspension. Without prejudice to the right of the Contracting Authority to confirm its intention to suspend, the Coordinator's observations shall be given a thorough consideration before taking the final decision for suspension. Such pre-information should not however impact the need for a timely suspension of the Grant Contract. The means of communication used shall provide clear evidence of the fact that the Coordinator was informed and the date on which this happened (a registered letter with acknowledgment of receipt or equivalent).

11.7. The Coordinator shall provide any requested information, clarification or document within 30 days of receipt of the requests sent by the Contracting authority. If, notwithstanding the information, clarification or document provided by the Coordinator, the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the Contracting Authority may terminate this Contract according to Article 12(2) h.	If, notwithstanding the information, clarification, or documentation provided by the Coordinator, the award procedure or the implementation of the Action proves to have been subject to substantial errors, irregularities, fraud, or a breach of obligations, then the Contracting Authority shall terminate the Grant Contract according to Articles 12(2) a and h.

19.2.11.4. Force majeure

Text of the Article	Guidelines

11.8. The term force majeure, as used herein covers any unforeseeable events, not within the control of either party to this Contract and which by the exercise of due diligence neither party is able to overcome such as acts of God, strikes, lock-outs or other industrial disturbances, acts of the public enemy, wars whether declared or not, blockades, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, washouts, civil disturbances, explosion. A decision of the European Union to suspend the cooperation with the beneficiary country is considered to be a case of force majeure when it implies suspending funding under this Contract.	This Article defines the elements necessary to be considered a circumstance as "force majeure": i.e. the circumstance of force majeure could not have been foreseen by the concerned party, it is beyond its control, it is not attributable to error or negligence on its part and it could not have been avoided even with all due diligence by the concerned party. In most cases, such circumstances are related to natural disasters like: flooding, mass fire, volcanic eruption, earthquake, hurricane, etc. However not every external force could lead to force majeure: a heavy rain that prevented an outdoor activity might have been foreseeable or might not have had a significant impact on the implementation of the Action as a whole. Force majeure may also be man-made, e.g. war, revolution, rebellion, terrorist activities, etc. Note that the above-mentioned circumstances of force majeure should also have an impact on the implementation of the Action by preventing, at least for a given period of time, the Beneficiary(ies) from fulfilling their obligations as initially envisaged. Without such impact, any circumstances, even if they are per se exceptional, unforeseeable, insurmountable, and beyond the control of the concerned party, shall not qualify as relevant for the suspension of the implementation. Defects in equipment or material or delays in making them available, labour disputes, strikes, or financial difficulties cannot be invoked as force majeure.

11.9. The Beneficiary(ies) shall not be held in breach of its contractual obligations if it is prevented from fulfilling them by circumstances of force majeure	If prevented from fulfilling its obligations due to force majeure, the Beneficiary(ies) will not be considered in breach of its obligations, thus excluding any of the possible negative consequences from such breach (such as termination of the Contract on this ground and/or reduction of the amount of the grant due to breach of contract). The Beneficiary(ies) shall therefore not be held responsible for not completing the Action due to such circumstances. In any event, if the Action is only partially implemented, the Contracting Authority shall reduce the grant in line with its actual implementation and the specific costs incurred.

19.2.11.5. Extension of the implementation period following a suspension

Text of the Article	Guidelines
11.10. In case of suspension according to Articles 11.2, 11.4 and 11.6, the implementation period of the Action shall be extended by a period equivalent to the length of suspension, without prejudice to any amendment to the Contract that may be necessary to adapt the Action to the new implementing conditions. Article 11.10 does not apply in case of an operating grant.	Suspension according to Articles 11.2, 11.4, and 11.6, shall lead to an extension of the duration of the Action of a period equivalent to the length of the suspension (provided that the implementation can be resumed).

19.2.12. Article 12 - Termination of the contract

19.2.12.1. Termination in case of force majeure

Text of the Article	Guidelines

12.1. In the cases foreseen in Article 11.2 and 11.4, if the Coordinator or the Contracting Authority believes that this Contract can no longer be executed effectively or appropriately, it shall duly consult the other. Failing agreement on a solution, the Coordinator or the Contracting Authority may terminate this Contract by serving two months written notice, without being required to pay compensation.	The exceptional/force majeure circumstances can determine an impossibility to continue the implementation of the Action. This could be established immediately after the exceptional/force majeure circumstances occurred or also at a later stage during or after the suspension of the implementation of the Action. If either the Coordinator or the Contracting Authority believes that the implementation of the Action can no longer be executed effectively or appropriately they shall consult each other in order to determine whether and how to continue the implementation of the Action. Failing an agreement, the Coordinator or the Contracting Authority may unilaterally terminate the Grant Contract by serving two months written notice, without being required to pay compensation. In this case, as said in Art 11.9, neither the Beneficiary(ies) nor the Contracting Authority is responsible for not finalising the implementation of the Action and therefore should not be considered in breach of their contractual obligations under the Grant Contract. In case the Action is only partially implemented, the Contracting Authority shall reduce the grant in line with its actual implementation and the costs incurred by the Beneficiary(ies).

19.2.12.2. Termination by the Contracting Authority

Text of the Article	Guidelines

12.2. Without prejudice to article 12.1, in the following circumstances the Contracting Authority may, after having duly consulted the Coordinator, terminate this Contract or the participation of any Beneficiary(ies) in this Contract without any indemnity on its part when: a) a Beneficiary(ies) fails, without justification, to fulfil any substantial obligation incumbent on them individually or collectively by this Contract and, after being given notice by letter to comply with those obligations, still fails to do so or to furnish a satisfactory explanation within 30 days of receipt of the letter;	The Contracting Authority shall terminate the Grant Contract or the participation of a Beneficiary(ies) in any of the cases foreseen in article 12.2. of these General Conditions. However, whenever possible, the termination of the Contract should be preceded by an adversarial procedure. In such a case, the Contracting Authority shall first send a pre-information letter explaining its intention to terminate the Grant Contract and the specific grounds and reasons for the termination and shall leave the Beneficiary(ies) a reasonable time to react and present its comments/objections to the termination (30 days).
b) a Beneficiary(ies) is bankrupt or being wound up, is having its affairs administered by the courts, has entered into an arrangement with creditors, has suspended business activities, is the subject of proceedings concerning those matters or is in any analogous situation arising from a similar procedure provided for in national legislation or regulations; c) a Beneficiary(ies), or any related entity or person, have been found guilty of an offence concerning their professional conduct proven by any means;	The Contracting Authority shall use a method of communication which provides clear evidence of the fact that the Coordinator was informed and the date on which it happened (a registered letter with acknowledgment of receipt or its equivalent). Without prejudice to the right of the Contracting Authority to confirm its intention to suspend, the Coordinator's observations shall be given a thorough consideration before taking the final decision for termination.

d) a Beneficiary(ies), or any related entity or person, have committed fraud, corruption, or are involved in a criminal organisation, money laundering or any other illegal activity detrimental to the European Union's financial interests; e) a change to a Beneficiary(ies)'s legal, financial, technical, organisational or ownership situation or the termination of the participation of a Beneficiary(ies) substantially affects the implementation of this Contract or calls into question the decision awarding the grant; f) a Beneficiary(ies) or any related person, are guilty of misrepresentation in supplying the information required in the award procedure or in the implementation of the Action or fails to supply - or fails to supply within the deadlines set under this Contract - any information related to the Action required by the Contracting Authority;	In light of the impact of the termination of a Contract, the Contracting Authority shall decide in full consideration of all the facts and might send a further request for clarification and/or information. In deciding whether to terminate the Grant Contract or only the participation of certain Beneficiary(ies), the Contracting Authority shall make a case by case analysis, taking into account the specific role of the Beneficiary(ies) involved, the gravity/extent of the circumstances/behaviours, the need to ensure the full and timely implementation of the Action as described in the description of Action, and the respect for the principle of proportionality, good financial management and equality of treatment of the Beneficiary(ies).
g) a Beneficiary(ies) has not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which it is established; h) the Contracting Authority has evidence that a Beneficiary(ies), or any related entity or person, has committed substantial errors, irregularities or fraud in the award procedure or in the implementation of the Action; i) a Beneficiary(ies) is subject to an administrative penalty referred to in Article 12(8);	a) a breach of the Grant Contract is committed where the Beneficiary(ies) individually or collectively fail to properly discharge any substantial obligations under the Grant Contract. As a general rule, the Contracting Authority shall first give notice - through a pre-information letter - to the Coordinator indicating the reasons why it believes that the Beneficiary(ies) has failed to carry out its tasks in accordance with the Grant Contract and shall leave the Beneficiary(ies) (via the Coordinator) a reasonable time to react and present its comments/objections or to correct this neglect or failure.

j) the Contracting Authority has evidence that a Beneficiary(ies) is subject to a conflict of interests; k) the European Commission has evidence that a Beneficiary(ies) has committed systemic or recurrent errors or irregularities, fraud, or serious breach of obligations under other grants financed by the European Union and awarded to that specific under similar conditions, provided that those errors, irregularities, fraud or serious breach of obligations have a material impact on this grant.	If the Beneficiary(ies) (via the Coordinator) still fail to comply or to furnish a satisfactory explanation within at the latest 30 days of receipt of the letter, the Contracting Authority shall terminate the Grant Contract or the participation of the relevant Beneficiary(ies) in the Grant Contract.
12.3. In the cases referred to in points (c), (d) (f) (h) and (k) above, any related person means any physical person with powers of representation, decision-making or control in relation to the Beneficiary(ies). Any related entity means, in particular, any entity which meets the criteria laid down by Article 1 of the Seventh Council Directive No 83/349/EEC of 13 June 1983.	

19.2.12.3. Termination of a Beneficiary(ies) participation by the Coordinator

Text of the Article	Guidelines

12.4. In duly justified cases, the participation of a Beneficiary(ies) in this Contract may be also terminated by the Coordinator. To this purpose, the Coordinator shall communicate to the Contracting Authority the reasons for the termination of its participation and the date on which the termination shall take effect, as well as a proposal on the reallocation of the tasks of the Beneficiary(ies) 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 Contract shall be amended accordingly in conformity with Article 9.	Such requests shall be very well justified, and the Contracting Authority shall be provided with any information and/ or any supporting documents proving, justifying, and supporting the request. It is not possible to provide an exhaustive list of cases which might lead the coordinator to request the termination of the participation of a Beneficiary(ies). In circumstances where such termination is requested, due account should be taken to ensure the full and timely implementation of the Action as described in the description of the Action, as well as the observance of the proportionality principle, the good financial management principle, the respect of the award decision, and the equality of treatment of the Beneficiary. If the Contracting Authority agrees to the Coordinator's request, then an amendment to the Grant Contract according to article 9.3 introducing the necessary modifications shall be made in order to officialise the termination of the participation of the Beneficiary(ies)'s concerned. Any termination of a Beneficiary's(ies') participation in the Grant Contract by the Coordinator without the prior consent of the Contracting Authority may result in the termination by the Contracting Authority of the whole contract according to Art. 12.2.e.

19.2.12.4. End date

Text of the Article	Guidelines

12.5. The payment obligations of the European Union under this Contract shall end 18 months after the implementation period laid down in Article 2 of the Special Conditions, unless this Contract is terminated according to Article 12 . The Contracting Authority shall notify the Coordinator of any postponement of the end date.	It is therefore imperative that the Coordinator submits the final payment request in a timely fashion.
12.6. This Contract will be terminated automatically if it has not given rise to any payment by the Contracting Authority within two years of its signature.	

19.2.12.5. Effects of Termination

Text of the Article	Guidelines
12.7. In the event of termination, the Beneficiary(ies) shall be entitled to payment only for the part of the Action carried out, excluding costs relating to current commitments that are not due to be executed until after termination. To this purpose, the Coordinator shall introduce a payment request to the Contracting Authority within the time limit set by Article 15(2) starting from the date of termination. In the cases of termination foreseen in Article 12.2 a), c), d), f), h) and k) the Contracting Authority may, after having properly consulted the Coordinator and depending on the gravity of the failings, request full or partial repayment of amounts already paid for the Action.	

19.2.12.6. Administrative and Financial penalties

Text of the Article	Guidelines
12.8. Without prejudice to the application of other remedies laid down in the Contract, a Beneficiary(ies) who has made false declarations, substantial errors, irregularities and fraud or was in serious breach of its contractual obligations may be excluded from all contracts and grants financed by the EU for a maximum of five years from the date on which the infringement is established, to be confirmed after an adversarial procedure with the European Commission, in accordance with the Financial Regulations applicable to the contracts covered by the Budget or the EDF. The period may be increased to ten years in the event of a repeated offence within five years of the first infringement.	In addition to the remedies which have their origin in the Contract, the Commission may also impose statutory penalties on Beneficiary(ies) who have been found to have seriously failed to meet their contractual obligations or who have made false declarations, substantial errors, irregularities and fraud. These statutory penalties may consist of: - administrative penalties: exclusion from future contract award procedures financed by the EU for a maximum period of 10 years, - financial penalties: fines representing 2% to 10% of the total value of the Contract. The rate may be increased to 4-20% in the event of a repeat offence within five years of the first infringement but cannot exceed the value of the contract.

12.9. In addition or in alternative to the administrative sanctions laid down in Article 12.8, a Beneficiary(ies) may also be subject to financial penalties representing 2-10% of the total value of this Contract. This rate may be increased to 4-20% in the event of a repeated offence within five years of the first infringement. 12.10. The European Commission shall formally notify the Beneficiary(ies) concerned of any decision to apply such penalties.	Such financial penalties are to be distinguished from the damages, liquidated or general, which are intended to be a compensation for the injury caused to a party by a contract breach committed by the other party. They are the expression of the administrative power of the Commission in the execution of the budget to sanction the conduct of economic operators detrimental to the EU financial interests. According to the current Internal Rules on the implementation of the EU budget, the decision to impose regulatory penalties is to be adopted by the authorising officer by delegation after prior adversarial proceedings with the Beneficiary(ies)in which he is allowed to present his observation vis-à-vis the alleged facts and intended penalty. The authorising officer by delegation shall also take a decision on the duration of the exclusion and/or the amount of the financial penalty in accordance with the principle of proportionality.
	In decentralised contracts, where the Commission is not the Contracting authority, the Contracting Authority shall inform the Commission when a contractor has been guilty of making false declarations, has made substantial errors or committed irregularities and fraud, or has been found in serious breach of its contractual obligations. This information might be used by the Commission to exclude an entity from participation in procurement procedures according to Article 109 of the Financial Regulation or the corresponding EDF provisions. Financial penalties may be imposed on contractors by the Contracting Authority if this is allowed by its national law.

19.2.13. Article 13 - Applicable law and dispute settlement

Text of the Article	Guidelines
13.1. This Contract shall be governed by the law of the country of the Contracting Authority or, where the Contracting Authority is the European Commission, by the European Union law supplemented as appropriate by Belgian law. 13.2. The parties to this Contract shall do everything possible to settle amicably any dispute arising between them during implementation of this Contract. To that end, they shall communicate their positions and any solution that they consider possible in writing, and meet each other at either's request. The Coordinator and the Contracting Authority shall reply to a request sent for an amicable settlement within 30 days. Once this period has expired, or if the attempt to reach amicable settlement has not produced an agreement within 120 days of the first request, the Coordinator or the Contracting Authority may notify the other part that it considers the procedure to have failed.	In cases where disputes between the Beneficiary(ies) and the Contracting Authority cannot be settled amicably, then they should be brought to court. When the Contracting Authority is the EC headquarters in Brussels or an EU Delegation, the dispute has to be settled in Belgium. On the other hand, when the Contracting Authority is the National Authorising Officer (for instance in case of EDF funds) then the case has to be brought to court in the country of the Contracting Authority and is thus governed by the laws of that country. However, before bringing the case to court, both parties should try to settle the dispute amicably according to the procedure foreseen in Art 13.2 . Other available legal remedies are also listed in point 2.4.15 of the PRAG.

19.3. Financial provisions

19.3.1. Article 14 - Eligible costs

19.3.1.1. Cost Eligibility Criteria

Text of the Article	Guidelines

14.1. Eligible costs are actual costs incurred by the Beneficiary(ies) which meet all the following criteria:	Eligible costs are actual costs incurred by the Beneficiary(ies) which meet all the eligibility criteria at the same time, and do not fall under the category of ineligible costs in Art. 14.9. Furthermore, they must be in line with the specifications included in the Call for Proposals, which may provide for specific instructions and/or limitations to the general rules set in the General Conditions (if appropriate, specific clauses will also be included in the Special Conditions). Costs have to be related to and generated by activities carried out within the implementation period of the Action (as defined in Art.2 of the Special Conditions) and in accordance with the contract.
	To be considered eligible, costs must be actually incurred by the Beneficiary(ies), and must have generated a debt to be paid directly by the entity which is party to the grant contract with the Contracting Authority. Actual costs incurred by Affiliated Entity(ies) which are identified in the Special Conditions can also be accepted as eligible. In this case, the Affiliated Entity(ies) concerned have to abide by the same rules applicable to the Beneficiary(ies) under the contract with regard to the eligibility of costs and the rights of checks and audit by the Commission, OLAF and the Court of Auditors.
	The Coordinator is responsible for monitoring the correct implementation of the Contract and 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 accurate supervision of the Beneficiary(ies) and Affiliated Entity(ies), and appropriate internal arrangements.

	It is worth reminding that costs that might have been deemed eligible at a first glance in the reports may be declared as ineligible following an audit or verification carried out according to art.16. The Coordinator should keep in mind that it bears the ultimate responsibility (including financial) of the Action and must reimburse to the Contracting Authority any cost declared ineligible. (see article 18.2 General Conditions)
a) they are incurred during the implementation of the Action as specified in Article 2 of the Special Conditions. In particular:	As a general rule, payments after the implementation period would typically relate to costs that by their nature would only be paid after the implementation period and possibly after the submission of the final report. This could for example include:
(i) Costs relating to services and works shall relate to activities performed during the implementation period. Costs relating to supplies shall relate to delivery and installation of items during the implementation period. Signature of a contract, placing of an order, or entering into any commitment for expenditure within the implementation period for future delivery of services, works or supplies after expiry of the implementation period do not meet this requirement;	- payments for activities carried out towards the end of the implementation period but where payment takes place later, e.g. because of warranty periods; - payments linked to costs for the closure of the Action (audit, reports and publications, dissemination of results etc).
(ii) Costs incurred should be paid before the submission of the final reports. They may be paid afterwards, provided they are listed in the final report together with the estimated date of payment; (iii) An exception is made for costs relating to final reports, including expenditure verification, audit and final evaluation of the Action, which may be incurred after the implementation period of the Action;	NB: Any unpaid amount above EUR 500 at the submission of the final reports has to be clearly listed in the "List of Pending payments" in the final financial report (Annex e3h7 - worksheet "Final sources of funding"). The following details should be provided: Name of the provider, Object of the contract (Final Audit, Works execution guarantee…), Amount in EUR, Due date, Reference document (Date and number of Invoice/ contract), Explanation and comments (why still not paid?).

(iv) Procedures to award contracts, as referred to in Article 10, may have been initiated and contracts may be concluded by the Beneficiary(ies) before the start of the implementation period of the Action, provided the provisions of Annex IV have been respected.	(iii) Costs related to the submission of final reports and the winding up of the Action, including expenditure verification, audit and the final evaluation of the Action, may be incurred after the implementation period of the Action, but in any event before the submission of the final reports.
	These costs may be considered eligible to the extent that these costs are reasonable and necessary for the Action, and that it was not possible to incur them during the implementation period. They may not consist of a mere extension of the activities of the Action. The closing up activities and related costs must be finally accepted by the Contracting Authority in order to be eligible; therefore it is suggested to present them clearly in the budget (including the "Justification sheet") or, as appropriate, in the description of the Action. If these costs were not foreseeable at proposal stage, it is advisable that the Coordinator agrees them beforehand with the Contracting Authority, insofar as is possible.
	This is an exceptional occurrence, which should be limited to strictly necessary cases. (iv) Contract-award procedures may be initiated before the start of the implementation period, in accordance with the rules and procedures set in Annex IV. This allows for instance for the signature a contract before the start of the Action to be already operational when the Action starts. However, these costs have to refer to - or will have to be generated during - the implementation period of the Action in order to be eligible.

	Example: signature of a rental contract on 15/12/n-1. Action starts 01/01/n. The rental will be eligible only for the period starting as of 01/01/n. Stocks are not eligible costs as such. Any procurement under the contract must follow Annex IV and costs must be in line with Art. 14 .
	In case of stringent operational needs of initiating the procurement of goods, services or works before the start of the implementation period of the Action, where significant amounts are involved, it is advisable to clearly explain and substantiate it in the description of the Action. This is without prejudice to the fact that, in any event, the Beneficiary(ies) bears the risk for any contract signed or commitment entered into before the signature of the contract, being it before or during the implementation period. (exceptional case)
b) they are indicated in the estimated overall budget for the Action;	In principle, only those cost items that have been approved in the budget and description of the Action are eligible, although it is possible to remove a budget item or introduce a new one. A request for amendment to the contract may have to be submitted by the coordinator according to Art. 9. Caution should always be used in making any modification to the human resources allocated to the project. In this case and in all doubtful cases, it is advisable to discuss and, if possible, agree in writing with the Contracting Authority beforehand.

c) they are necessary for the implementation of the Action;	It is important to pay particular attention to explain which specific resources and related costs are needed for the implementation of the Action, in order to justify their link with the Action (activities, results and objectives) and therefore their funding. Costs for items charged that were not necessary for the project purposes are a frequent source of cost ineligibility. This can be implicitly done in the description of the Action, but more specifically it also has to be included in the budget, in Worksheet 2, in the column "Clarification of the budget items". This condition is also strictly linked with letter f) below.

d) they are identifiable and verifiable, in particular being recorded in the accounting records of the Beneficiary(ies) and determined according to the applicable accounting standards of the country where the Beneficiary(ies) is established and according to the usual cost accounting practices of the Beneficiary(ies);	All the costs incurred - corresponding to the entire budget of the Action and not only to the EU grant - must be recorded in the accounts of the Beneficiary(ies) or, as the case may be, of the Affiliated Entity(ies). The supporting documents (tenders, orders, vouchers, invoices, receipts etc.) must be in place and tally with the recorded costs. (See also Article 16 for more details) The Coordinator is responsible for verifying and consolidating the information that will be provided to the Contracting Authority; therefore it should as well make sure that the conditions for the eligibility of costs are met, through accurate supervision of the Beneficiary(ies) and Affiliated Entity(ies) and appropriate internal arrangements. It is strongly advisable for the Coordinator to keep (electronic) copies of all relevant documents and accounts and to carry out ex-ante and constant checks to ensure that supporting and accounting documents available, correct, and duly filed and recorded. The Coordinator should keep in mind that it bears the ultimate responsibility (especially financial) of the Action and must reimburse to the Contracting Authority any cost declared ineligible. (see article 18.2 General Conditions) The "applicable accounting standards of the country where the Beneficiary(ies) is established" refer to the rules to which the Beneficiary(ies) or Affiliated Entity(ies) are subject to by law. If the concerned beneficiary or Affiliated Entity is not governed by any national accounting rules, this condition simply does not apply.

e) they comply with the requirements of applicable tax and social legislation;	The Beneficiary(ies) and the Affiliated Entity(ies) are fully responsible for the co-ordination and execution of all activities and have to ensure compliance with local, national, or applicable legislation. They must respect their applicable rules, procedures and policies. These should include, but are not limited to, the respect for fundamental human rights, social justice and human dignity, respect for the equal rights of men and women, prohibition of forced labour and child labour, preservation of the environment, respect of all laws of proper jurisdiction including the principles of transparency, non-discrimination, anti-corruption and ethics, avoidance of conflicts of interest, fraud and corruption, etc.

f) they are reasonable, justified and comply with the requirements of sound financial management, in particular regarding economy and efficiency.	It is important to pay particular attention to explain how costs are calculated and budgeted. This is particularly true for those costs that are relevant or not easily justifiable because, for instance, they are especially expensive (compared to other similar items) and/or are purchased in high quantity. The explanation has to be provided at proposal stage in the budget, Worksheet 2, in the column "Justification of the estimated costs", and/or as appropriate in the reports to understand their relationship with the results/activities of the Action. NB. This is especially important in the case of simplified cost options where for each corresponding budget item or heading, the text must: - describe the information and methods used to establish the amounts of unit costs, lump sums and/or flat-rates. - explain the formulas for the calculation of the final eligible amount - identify the Beneficiary(ies) who will use the simplified cost option (in case of an Affiliated Entity(ies), the Beneficiary should be specified first), in order to verify the maximum amount per each Beneficiary (which includes if applicable simplified cost options of its Affiliated Entity(ies)). Refer to Annex K for further information on simplified cost options. This condition is also strictly linked with letter c) above.

19.3.1.2. Eligible Direct Costs

Text of the Article	Guidelines
14.2. Subject to Article 14.1 and, where relevant, to the provisions of Annex IV being respected, the following direct costs of the Beneficiary(ies) shall be eligible:	Article 14.2 lists some categories of direct eligible costs that may be eligible subject to specific conditions. The eligibility of costs is also determined by compliance with the procurement rules set out in Annex IV. If the Beneficiaries and the Affiliated Entity(ies) do not follow these rules, the EU may not accept the costs incurred and may reduce the final amount of the grant accordingly. NB: Lack of documentation in tendering procedures, i.e. insufficient evidence that the procurement process managed by the Grant Beneficiary(ies) conforms to the requirements of the legal framework, is one of the most recurrent sources of ineligibility of costs.
a) the cost of staff assigned to the Action, corresponding to actual gross salaries including social security charges and other remuneration-related costs; salaries and costs shall not exceed those normally borne by the Beneficiary(ies), unless it is justified by showing that it is essential to carry out the Action;	Staff costs are eligible provided that the staff are essential to the implementation of the Action and are explicitly mentioned in the project proposal. The eligible costs are constituted by gross salaries or wages in respect of the actual time devoted to the project and include income taxes, social security etc., and other statutory costs included in the remuneration, provided they are standard Human Resources policy of the Beneficiary and can be proved by supporting documents of the Beneficiary (or Affiliated Entity).

	For example, medical insurance, repatriation, relocation, visa costs, housing allowance, salary adjustments, other benefits etc. may only be eligible if they respect all applicable legislation, constitute a standard practice of the organization and are actually paid. As a general rule "Provisions" in the Beneficiary's accounting cannot be considered as actual costs, but some exceptions can be agreed on a case-by-case basis where they constitute an obligation under applicable law and a certain future disbursement. (refer to Art. 14.1 a) ii) for the requirement of costs not yet paid at the submission of the final report)
	They should be traceable to supporting schedules (number and names of staff, part-time / full time indication), to payroll records (e.g. salary slips), and to Human Resources records (e.g. employment contracts). NB: A pro-rata system based on estimations cannot be used to justify direct costs, since such a system would not represent real cost (but only estimation). For example it may be accepted that a country director works 20% on a contract if supported by timesheets, justifying that he actually worked those hours or days on this project. The time worked and the costs linked to it represent closely the reality. However, it cannot be accepted that a country director's working time is divided equally on a pro-rata basis on 5 different projects, based on the assumption that he spends equal time on all projects - because such an assumption does not necessarily reflect reality.

	Refer to Art. 14.7 for more information on "Shared costs". <ins>HQ staff</ins> As a general rule, costs of HQ staff should be covered by indirect costs. However, with due consideration to the description and the functional organisation of the Action and of the Beneficiary(ies), they may be charged as direct costs in the following circumstances: - They relate to the achievement of the Action's operational results and have accordingly been identified as an operational activity in the description of the Action.
	- They cover the actual presence of HQ staff in the field (e.g. specific monitoring missions, needs assessment, etc). This means that a simple % is not acceptable, a specific pro-rata related to the actual days/months of mission in the field has to be demonstrated. They must be well justified in the framework of the Action and accepted by the Contracting Authority. In all other cases, the related HQ staff costs cannot be charged to the Action as direct costs either in whole or on a pro rata basis, calculated for instance on the basis of the time the HQ staff spent on the concerned activities.

	Consultants (v. Employees) As a general rule, tasks performed by consultants, experts and/or other service providers (e.g. accountants, lawyers, translators, external IT staff, etc…) are to be considered as resulting from implementation contracts (Art.10 General Conditions). Consequently, Beneficiaries of grants must award the contract to the tender offering best value for money, that is to say, to the tender offering the best price/quality ratio, while taking care to avoid any conflict of interests, i.e. in accordance with Annex IV. These costs are thus not considered as human resources (budget heading 1) but as other costs/services (notably budget heading 5 or 6)
	Specific case: "in-house consultants": In house/"intra muros" consultants are natural persons working on the basis of a service contract as opposed to employees hired on the basis of a labour contract. They join the Beneficiary's(ies') project team and deliver 'external services'. The costs arising from these in-house consultants are in principle to be considered as costs relevant to implementing contracts. However, as an exception to the rule, these costs may be considered as personnel costs regardless of whether the consultants are self-employed or employed by a third party, if the following cumulative conditions are fulfilled in accordance with the terms of the call for proposals and subject to the eligibility of costs:

	(a) the Beneficiary(ies) has a contract to engage the consultant to work for it and (some of) that work involves tasks to be carried out under the project funded by the grant; (b) the consultant must work under the instructions/supervision of the Beneficiary(ies); (c) the consultant must work in the premises of the Beneficiary(ies) as a member of the project team; (d) the output of the work belongs to the Beneficiary(ies);
	(e) the costs of employing the consultant are reasonable, are in accordance with the normal practices of the Beneficiary(ies) and are not significantly different from the personnel costs of employees of the same category working under a labour law contract for the Beneficiary(ies); (f) travel and subsistence costs related to such consultants' participation in project meetings or other travel relating to the project is directly paid by the Beneficiary or in any case according to the Beneficiary's own staff procedures. (g) the consultant uses the Beneficiary's(ies) infrastructure (i.e. user of the 'indirect costs').
	These conditions describe a de facto situation of subordination, as in a traditional labour contract (regardless of the legal form). Therefore in these cases, if the national applicable legislation allows for a de facto employee to be hired under a service contract, and provided that all the conditions stated above (similar costs, property of results, subordination, etc) are satisfied, these service contract may be assimilated to staff costs in the budget and for all useful purposes (for instance procurement rules set out in Annex IV would not apply).

	This is to be evaluated by the Contracting Authority on a case by case basis, so it is strongly suggested to discuss it as soon as possible with the Contracting Authority to avoid any problems. Note also that if these conditions are not met, a service contract may still be awarded through the applicable procurement procedures. Unless otherwise specified in the Guidelines for Applicants, service contracts meeting these criteria may be charged to heading 1.Human Resources.
b) travel and subsistence costs for staff and other persons taking part in the Action, provided they do not exceed those normally borne by the Beneficiary(ies) nor the rates published by the European Commission at the time of such mission;	Travel and subsistence costs of any person taking part in the Action are eligible, including staff of the Beneficiary(ies), Associates, Affiliated Entity(ies) and the final Beneficiary(ies). Per diem rates published by the European Commission cover accommodation, meals, tips, local travel, and sundry expenses. Per diems are reimbursed or in any case the ceiling is fixed according to the number of nights spent on the event and not to the number of days. Per diems should be traceable to supporting schedules (number and names of staff, number of times the per diem was paid, per diem rates and countries concerned) and the Beneficiary's records (accounting, payroll, Human Resources).

	In the Budget of the Action: 1.3.1 Abroad (staff engaged in the Action): the per diem for staff based in the country where the Beneficiary is based, going to another country for the Action; 1.3.2 Local (staff engaged in the Action): the per diem for staff who move within their country of assignment (e.g. based in Nairobi and going to Mombasa for the Action); 1.3.3 Participants in seminars/conferences: the per diems for any participant in the project activities who is not part of the project staff (including associates), independently of where they come from.
	The budget must indicate the countries where the per diems have taken place, the applicable amounts, the number of participants, and the number of nights spent at the event. *(Example follows this table)* There may be different rates even within the same country, depending for instance on the profile of the person receiving the per diems or, in any case, according to the rules and procedures of the Beneficiary. Therefore, a student accommodated in a hostel would possibly receive a lower compensation than a person who is supposed to be accommodated in a hotel.

	In any event, the maximum per diem rates eligible, may not exceed those normally borne by the Beneficiary(ies) nor those in force at the time of the mission and published by the European Commission at: https://ec.europa.eu/europeaid/perdiem_en and regularly updated (every 6 months). Therefore the rates indicated in the budget submitted to the Contracting Authority are an estimated rate. On the one hand, the Grant Beneficiary may reimburse these costs (accommodation, meals, tips, local travel, and sundry expenses) to its staff on the basis of real costs incurred by its staff or on the basis of per diems (daily allowances), according to its own Human Resources procedures.
	On the other hand the Grant Beneficiary may decide to ask for reimbursement by the Contracting Authority (i.e. in the Action budget) on the basis of: a) costs actually incurred, i.e. the amounts actually reimbursed to its staff, whether either actual costs or per diems; or b) simplified cost options, i.e. using the same criteria as for any other simplified cost option, more specifically a “unit rate”.

	It's mostly probable that if the Grant Beneficiary reimburses travel and subsistence costs to its staff on the basis of per diems, this amount will be the maximum allowed rate, and there is neither need nor justification to use simplified cost options to claim the same amount (a higher rate would not be justified, unless the per diems of the Beneficiary(ies) cover different costs as the ones included in the EU rates). Therefore “per diems” are not considered as a simplified cost option for the purposes of Union financing when a Grant Beneficiary reimburses a fixed amount to its staff in accordance with its staff rules and requests the reimbursement of that same amount in the Action Budget. Such per diems are considered actual costs, as any other.
	Where a “unit rate” is agreed, not all supporting documents are required (restaurant's bills, taxi slips…), but only those to prove that the travel actually took place. The Contracting Authority will reimburse the unit rates established in the Action budget, according to procedures and conditions set out in the contract. (refer to Annex K for mandatory requirements and procedures).

Example:

Expenses	***Unit***	***# of units***	***Unit cost (in EUR)***	***Costs (in EUR)***
Seminar No1 (France): 7 nights x 12 persons = 84 nights	*Per diem*	*84*	*130*	*10 920*

c) purchase costs for equipment and supplies (new or used) specifically for the purposes of the Action, provided that ownership is transferred at the end of the Action when required in Article 7.5;	Exceptional case: Can the Beneficiary's(ies') own durable equipment be considered an eligible direct cost? When the Beneficiary's)(ies') own equipment (proof of property and payment may be requested) is provided for an Action, the running costs may be charged as direct costs, but the cost of use is normally considered to be covered within indirect costs. Durable equipment is usually defined as equipment that can be used over their estimated economic useful lifespan of more than 1 year and has a residual economic value after minimal use.
	The cost of use (in the form of depreciation) could exceptionally be accepted by the Contracting Authority as direct cost, when at least these basic conditions have been considered: - It is so accepted by the Contracting Authority because justified by the concrete situation and type of equipment. - No transfer to the final Beneficiary(ies) or the local partner(s) at the end of the Action is foreseen: the equipment is not necessary for the sustainability of the project. - Such use is more effective than the rental or purchase of new equipment. - The costs are not higher than the corresponding costs on the local market.

	- The equipment is in good condition and suitable for the proper implementation of the Action. - It does not imply double-financing or profit for the Beneficiary (the equipment must not have been paid entirely by the EU in a previous project or by any other donor. Depreciation is never eligible when the equipment is a contribution in kind). - The value of the equipment must have a price-tag entered in the Beneficiary's(ies') accounting system.
	- The costs pass the test for direct eligible costs (with special attention to the direct link with the implementation of the Action), except for the specific procurement procedures of Annex IV (general ethical procurement principles have to be respected in all cases). Depreciation could then be accepted as a direct cost exclusively for the period when the equipment is used for the Action. Only the costs relating to the unexpired depreciation period and to the implementation period of the Action can be charged. Once fully depreciated, no costs can be charged or reimbursed, other than running costs.
d) costs of consumables;	
e) costs entailed by contracts awarded by the Beneficiary(ies) for the purposes of the Action referred to in Article 10.	This refers to the costs of supply, service or work contracts awarded in line with the procurement rules set out in Annex IV or to the financial support given to third parties.

f) costs deriving directly from the requirements of the Contract (dissemination of information, evaluation specific to the Action, audits, translation, reproduction, insurance, etc.) including financial service costs (in particular the cost of transfers and financial guarantees where required according to the Contract);	
g) duties, taxes and charges, including VAT, paid and not recoverable by the beneficiaries, unless otherwise provided in the Special Conditions:	**As a general rule the Beneficiary has to apply for tax (including VAT) exemption whenever possible.** This clause refers to indirect taxes such as VAT and customs/import duties and not to direct taxes such as the income tax of staff working on the project, which are part of the gross salary. The rules on taxes apply to Affiliated Entity(ies) as well as to the Grant Beneficiary(ies). The Call for Proposals, notably in the applicant's guidelines and Annex J, states the eligibility of taxes. Charging of VAT or taxes is a frequent source of cost ineligibility; therefore specific attention has to be paid to understanding the correct treatment of taxes.

	When duties, taxes and charges are eligible under a Call for Proposals (refer to the applicant's guidelines and Annex J) they may be treated as any other cost, and may be included in the relevant budget heading. NB. note that VAT is not eligible where it is paid by a public body (i.e. a body governed by public law) of a Member State in relation to activities it carries out as a public authority of a Member State. These activities are strictly limited to the exercise of sovereign powers or prerogatives of a Member State (for instance police, justice and public domain management). Therefore in principle, VAT on activities such as training, capacity building, technical assistance, policy support etc. is usually eligible.
	Accepted cost system The Call for Proposals might state the non-eligibility of taxes, particularly when some of the Regulations or Financing Agreements with Beneficiary Countries exclude the financing of taxes (including VAT), even when the Grant Beneficiary cannot reclaim them. These costs would therefore be ineligible for EU-financing, and may not be included in the eligible costs of the Action. When taxes are not eligible, the Call for Proposals may provide for the "accepted cost system", introducing a second percentage to be respected when determining EU funding. This allows the acknowledgment of the payment by the Grant Beneficiary of ineligible and non-recoverable taxes: the EU-contribution to the eligible costs may be increased while at the same time the co-financing requirement will be fulfilled by the Grant Beneficiary's(ies') payment of such taxes.

	To be able to do this, two (maximum) co-financing rates must be specified in the Guidelines for Applicants: - 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-refundable taxes).** This is used to calculate the required amount of co-financing by the Grant Beneficiary(ies). If the amount does not reach the minimum percentage fixed in the contract, then the EU-contribution will be reduced proportionately.
	Note that the Guidelines for Applicants will specify the maximum rates. The rates that will be fixed in the contracts will depend on the contribution asked by the applicant. The final amount of the grant will be subject to the maximum amount laid down in the contract, and the co-financing rates will be based on actual costs that are only known at the time of the approval of the final report. Provided they are necessary, directly related to the Action and incurred during the implementation period, these costs can therefore be considered as part of the co-financing of the Beneficiary(ies). The taxes can only be considered to fall within the share of co-financing of the Beneficiary(ies) if they have been clearly identified in the budget of the Action following the submission of the proposal and if the Beneficiary(ies) can prove it/they cannot recover them, unless one of the exceptions in Annex J applies.

	They are ineligible costs, to be entered in the budget under heading 12 "taxes" and form part of the total accepted costs. However, if the Grant Beneficiary fails to show it cannot reclaim such taxes, these taxes will be declared simple ineligible costs, which are ignored when checking the co-financing by the Grant Beneficiary(ies).
	<u>Evidence that taxes may not be recovered</u> In all cases, the Beneficiary(ies) or its Affiliated Entity(ies) must be able to show that they paid but cannot reclaim those taxes. Taxes that can be reclaimed or refunded in full or in part (even some years later) may not be considered either as eligible or accepted costs. Refer to Annex J “Information on the tax regime applicable to grant contracts” for guidelines on the evidence that the Grant Beneficiary(ies) and its Affiliated Entity(ies) are not tax-exempt and cannot recover taxes. Additionally, Annex J sets out clearly situations in which Grant Beneficiaries may report taxes as project expenditure but do not need to prove that they cannot get tax exemption or recover the taxes. It is advisable to seek the advice of the Contracting Authority if unsure whether a particular situation of exemption applies to their project.
	In some countries the tax authorities do not operate efficiently or simply do not reply to correspondence. In such cases, Grant Beneficiaries are recommended to seek advice from the Contracting Authority and keep as much evidence as possible of the steps undertaken. This proof does not have to be submitted to the Contracting Authority but must be available upon request or to auditors during the expenditure verification reports/audits.

h) overheads, in the case of an operating grant.	In fact, an operating grant is conceived to cover the running costs of the Beneficiary.

19.3.1.3. Simplified Cost Options

Text of the Article	Guidelines
14.3. In accordance with the detailed provisions in Annex III, eligible costs may also be constituted by any or a combination of the following cost options: a) unit costs; b) lump sums; c) flat-rate financing.	Refer to Annex K for further information on simplified cost options. Pay attention not to get confused between what the Beneficiaries themselves can claim to be reimbursed in the form of simplified cost options (EUR 60 000 **per Beneficiary**) and the financial support (Art.10.4 to 10.8 GC) that they may give (EUR 60 000 **per recipient**). In fact when a Beneficiary pays FS to a third party, even on the basis of a "global amount" (which indeed can be assimilated to simplified costs), for the beneficiary vis à vis the Contracting Authority this is just like any other actual cost incurred. There is absolutely no relationship between the two amounts, especially in terms of maximum thresholds.

14.4. The methods used by the Beneficiary(ies) to determine unit costs, lump sums or flat-rates shall be clearly described and substantiated in Annex III and shall ensure compliance with the no-profit rule and shall avoid double funding of costs. The information used can be based on the Beneficiary(ies)'s historical and/or actual accounting and cost accounting data or on external information where available and appropriate. Costs declared under simplified cost options shall satisfy the eligibility criteria set out in Article 14.1 and 14.2 . They do not need to be backed by accounting or supporting documents, save those necessary to demonstrate the fulfilment of the conditions for reimbursement established in Annex I and III. These costs may not include ineligible costs as referred to in Article 14.9 or costs already declared under another costs item or heading of the budget of this Contract. The amounts or rates of unit costs, lump sums or flat-rates set out in Annex III may not be amended unilaterally and may not be challenged by ex post verifications.	The **amounts** of unit costs and lump sums or the rate (%) of flat-rates set out in Annex III may not be amended unilaterally. However the **number of units** in the case of unit costs may vary (according to the rules and limits set in the contract), as may the **amount produced by applying the % rate** in the case of flat-rates (as it happens similarly for the indirect costs).

14.5. The total amount of financing on the basis of simplified cost options may not exceed EUR 60 000 per each Beneficiary, unless otherwise provided for in the Special Conditions.	The threshold of EUR 60 000 is applicable per each Beneficiary (coordinator and co-Beneficiaries) individually: this includes also the amount of the entity(ies) which are respectively affiliated to each of them, i.e. the share of Affiliated Entities cumulates with the amount of the Beneficiary(ies) they are affiliated to. Example: a grant with 1 Coordinator and 2 co-Beneficiary(ies) and 3 Affiliated Entities (2 of which are linked to the Coordinator and one to the other beneficiary). They may apply for simplified cost options up to: Grant Beneficiary 1: coordinator together with its 2 Affiliated Entity(ies) A and B : EUR 60 000 Grant Beneficiary 2: co-Beneficiary together with its Affiliated Entity C: EUR 60 000 Grant Beneficiary 3: co-Beneficiary with no Affiliated Entity(ies) : EUR 60 000 This means for instance that the coordinator may apply for EUR 20.000, Affiliated Entity A for 30.000 and Affiliated Entity B 10.000, total must be =< 60.000. If Grant Beneficiary 3 does not use simplified cost options, their allocation of EUR 60 000 may not be used by the other Beneficiaries.

19.3.1.4. Contingency Reserve

Text of the Article	Guidelines

14.6. A reserve for contingencies and/or possible fluctuations in exchange rates not exceeding 5 % of the direct eligible costs may be included in the budget for the Action, 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 duly justified request by the Coordinator.	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 external Actions given the specificity and the higher level of unpredictability of external actions. This is meant to provide some flexibility if there are unforeseen circumstances, as the Contracting Authority's contribution to the Action may never be increased (neither the maximum amount nor the percentage of co-financing).
	NB: 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. An amendment in accordance to art.9 has to be issued if the 25% threshold is exceeded.

	Exchange rate fluctuation There is no clear-cut definition of “exceptional” circumstances: this would entail a sudden, completely unforeseen and drastic change in the situation - for example a sharp devaluation decided by the Government unexpectedly or uncommon cases of hyperinflation, etc. For exchange rates, the historical fluctuation of the currency could be a prime baseline indicator. The performance of the economy is also an element taken into consideration when drawing up a budget and estimating the possible fluctuation of a currency. All these elements have to be taken into consideration at proposal stage, and during the implementation of the Action the conversion of funds into local currencies (or a currency other than the contract's currency) has to be handled according to the principle of sound financial management. Situations produced by poor management by the Beneficiary(ies) may not be accepted as a contingency.

	An exchange rate fluctuation (which has a similar effect to inflation) has to be distinguished from an exchange rate difference (losses or gains, as determined in the accounting), the latter not being eligible as per Article 14.9 of the General Conditions. An unfavourable exchange rate fluctuation will basically result in "increased" cost of the activities of the Action that will be reflected in various budget lines. Additionally, in the case of exceptional exchange rate fluctuations, Article 15.9 of the General Conditions states that the Action may have to be restructured to lessen the impact of such fluctuations or - if it will no longer be possible to implement the Action in view of the missing funds - the contract may even be terminated.

	In considering whether the Action should be restructured or whether the contract should be terminated, the Contracting Authority must make a case-by-case assessment taking into account the options provided by the contract, and considering aspects like sound financial management, the interest of the Action and final Beneficiaries, and the capacity of the Grant Beneficiary to raise additional funding etc. If the decision will be 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. So this case would just be one of the possible reasons justifying the use of the contingency reserve, for which the Beneficiary is not responsible and has already adopted all the possible risk mitigating measures according to the best practices in the sector.

19.3.1.5. Indirect costs

Text of the Article	Guidelines

14.7. The indirect costs for the action are those eligible costs which may not be identified as specific costs directly linked to the implementation of the action and may not be booked to it directly according to the conditions of eligibility in Article 14.1 . However, they are incurred by the beneficiary(ies) in connection with the eligible direct costs for the action. They may not include ineligible costs as referred to in Article 14.9 or costs already declared under another costs item or heading of the budget of this Contract.	Direct eligible costs v. indirect eligible costs As regards Action Grants, a distinction is made between direct and indirect eligible costs: - Direct eligible costs: Direct costs are action-specific costs directly linked to the performance of the Action and which can therefore be booked to it directly. Direct costs are identifiable and verifiable costs, for which concrete supporting documents can be submitted as evidence. They are expenses strictly related to the implementation of the Action, and exist only by consequence of its implementation. The eligibility of direct costs is mainly defined in Art.14.1 of the General Conditions: the listed criteria have to be respected at all times for all costs.
A fixed percentage of the total amount of direct eligible costs of the Action not exceeding the percentage laid down in Article 3 of the Special Conditions may be claimed to cover indirect costs for the Action. Flat-rate funding in respect of indirect costs does not need to be supported by accounting documents. This amount shall not be taken into account with regard to the maximum amount of simplified cost options.	- Indirect eligible costs: these are not identifiable as specific costs directly linked to the performance of the Action. However, the Beneficiary(ies) should be able to justify them using its/their accounting system as having been incurred in connection with the eligible direct costs for the Action. Indirect Costs may not include any eligible direct costs included in other headings of the budget. They mainly represent a small proportion of the Beneficiary's overheads. Overheads are all the structural and support costs of an administrative, technical and logistical nature which are cross cutting for the operation of the Beneficiary body's various activities and cannot therefore be booked in full to the Action for which the contract is awarded because this contract is only one part of those activities.

Indirect costs shall not be eligible under a grant for an action awarded to a beneficiary who already receives an operating grant financed from the Union budget during the period in question. This Article 14.7 does not apply in the case of an operating grant.	*Example: costs connected with infrastructure and the general operation of the Beneficiary at headquarter level and costs such as administrative and financial management, human resources, training, legal advice, documentation, IT, maintenance of buildings, water, gas, electricity, insurance, office supplies, communications, Human Resources, accounting fees, depreciation, telephone bills, travel and other utilities costs, etc.* Indirect eligible costs relate to the functioning and general activities of the Beneficiary: they cannot be attributed entirely to the Action, but are still partially generated by it.
	These costs may be funded either on a **on a flat rate basis or on a real costs basis**. Note that that the **two options are exclusive** and that the same indirect costs can never be covered by both real costs reimbursement and a flat rate, in order to prevent any double funding of the same costs. Given the difficulty of justifying each of these costs separately, the flat rate funding of indirect costs is meant to simplify the administrative charge of the Beneficiary by facilitating the management and reporting of these indirect costs. The use of flat rate funding is encouraged, since no supporting documents are required for these costs once agreed in the contract.

	This means that when proposing the budget, the applicant may (unless otherwise stated in the Call for Proposal) decide to include these costs in the direct costs or opt for a flat rate reimbursement. In the latter case a percentage (not exceeding 7%) will be laid down in Article 3 of the Special Conditions. The applicant may be asked to justify the percentage requested before the contract is signed. *Example: Total direct eligible costs: EUR 100,000 + 7% = EUR 7,000 indirect costs = EUR 107,000 total costs. Note that 7% is a maximum but if it is not justified a smaller percentage has to be envisaged.* The basis for the calculation of the indirect costs does not include ineligible (but accepted) taxes and in kind contributions (heading 12).
	The final amount of indirect costs that can be claimed depends on the amount of total direct costs reported in the final financial report and approved by the Contracting Authority. (the unused contingency reserve is therefore not included in the direct costs) On the other hand, in cases where the Applicant has charged some overheads under the headings of eligible direct costs, but still requests additional flat rate funding, verification on the indirect costs that will be covered by the flat rate funding will be carried out during the contract preparation phase. The flat rate may not cover any expenditure already covered by the direct eligible costs (no double-financing of costs). Therefore it is expected, in this case, that the percentage will be lower than 7%.

	Depending on the characteristics of the Action and the organisational and cost structure of the Beneficiary, it may happen that some costs can be considered either direct or indirect costs (e.g. depreciation costs, consumables, HQ staff), but in all events costs cannot be taken into account twice as a direct cost and an indirect cost. The distinction between direct and indirect costs is also based on the capacity of the Beneficiary's(ies') accounting system to assign costs to specific activities when they are incurred.
	Example: if the costs of printing and copying are assigned to a particular Action when this copying and printing occurs, these costs are direct. If, by contrast, these costs are assigned ex post using an approximation (or an indicative cost driver) (e.g. the number of hours worked for each Action during the year), these costs are indirect. NB: If an applicant is in receipt of an Operating Grant financed from the EU, no indirect costs may be claimed on its share of incurred costs. This applies only to the costs incurred by the Beneficiary(ies) or Affiliated Entity(ies) in receipt of the Operating Grant.

	Shared costs If the Beneficiary shares out certain costs to different uses and projects according to a cost allocation system, the related costs may be eligible provided that they are linked to the Action. The cost allocation system must be based on the Beneficiary's standard practice and applied consistently with all donors and projects, and must be justifiable and reasonable. The Beneficiary must be able to demonstrate how the costs charged were derived at any time. NB: shared costs are not necessarily considered as indirect costs. Depending on their nature and the link they have with the Action, they may be direct or indirect.
	In terms of the allocation of staff, staff specifically assigned by the labour contract to spend a defined share of its working time on a project may be considered as a shared direct cost actually incurred. Assignment of a cost share on the basis of daily or weekly timesheets can be accepted as a shared direct cost actually incurred; by contrast, assignment on the basis of annual timesheets or estimation cannot be realistic and verifiable and cannot be accepted as an actually incurred cost. Note that provisions/estimates/pro-rata approaches do not represent real costs and can therefore not be accepted as direct costs actually incurred.

19.3.1.6. In kind contributions

Text of the Article	Guidelines

14.8. Any contributions in kind, which shall be listed separately in Annex III, do not represent actual expenditure and are not eligible costs. Unless otherwise specified in the Special Conditions, contributions in kind may not be treated as co-financing by the Beneficiary(ies). If contributions in kind are accepted as co-financing, the Beneficiary(ies) shall ensure they comply with national tax and social security rules. Notwithstanding the above, if the Description of the Action provides for contributions in kind, such contributions have to be provided.	In-kind contributions are constituted by non-financial resources (such as goods, equipment or services) provided to the Beneficiary(ies) or Affiliated Entity(ies) free of charge by a third party. Contributions in kind do not involve any expenditure for the Beneficiary(ies) and are not entered in its/their accounts as a cost. Consequently, contributions in kind can never appear in the budget of the Action as an eligible cost. Example: medicines or a car donated to an Action by a donor. However they may be accepted as co-financing when considered necessary or appropriate (e.g.: small grants targeted for community based organisations which have no possibility to provide financial contributions).
	Contributions in kind may only be treated as co-financing if the guidelines of the particular Call for Proposals allow contributions in kind and the contributions in kind are explicitly mentioned in the Special Conditions of the contract. In such a case, the Call for Proposal will have to provide for the “accepted cost system” (see Art. 14.2 g) General Conditions), in order to keep into account the co-financing provided in kind or adapt accordingly the co-financing percentage of eligible costs.

	It may be difficult to calculate the financial value of such contributions and to assess whether they have effectively been provided. The unit rate or the global amount of contributions in kind is evaluated as proposed in the Budget (heading 12 and Expected sources of funding) and, once approved, it may not be subject to subsequent changes. In case of variable numbers of units, the fixed unit rate together with the estimated number of units must be defined in the justification sheet of the Budget.
	Example: rough figures may be generated by calculating volunteering time and allocating to this the value of the minimum wage of the country in question. *Example: In the case of the use of free venues, figures may be calculated according to the equivalent market cost.* When in-kind contributions are necessary and accepted for the Action, if the Beneficiary(ies) incur actual costs in relation to their distribution, handling, use, or acceptance the related costs may be eligible (subject to the respect of the eligibility criteria laid down in Art. 14 of the General Conditions). These costs can therefore be entered in the Action's budget.

	Example: the fuel and maintenance costs for a car given as an in-kind contribution to an Action. *Q&A* *Is the provision of staff a contribution in kind?* *According to Article 14.2 of the General Conditions, the cost of staff directly involved in project implementation and management incurred (and therefore paid) by the Grant Beneficiary or its Affiliated Entity(ies) is considered as an eligible cost, not a contribution in kind.* *They may be included as direct eligible costs in Heading 1 of the budget. Formal proof of the costs involved (e.g. amendment of the work contract to affect the staff to the Action, post and task description, work-time documentation or timesheets for part-time posts, proof of payment etc.) is required. Note that voluntary work (unpaid work) is not an eligible cost, but could be considered as an in-kind contribution.*

19.3.1.7. Non-eligible costs

Text of the Article	Guidelines

14.9. The following costs shall not be considered eligible: a) debts and debt service charges (interest); b) provisions for losses or potential future liabilities; c) costs declared by the Beneficiary(ies) and financed by another action or work programme receiving a Union (including through EDF) grant; d) purchases of land or buildings, except where necessary for the direct implementation of the Action, in which case ownership shall be transferred to the final beneficiaries and/or local Beneficiary(ies), at the latest at the end of the Action, in accordance with Article 7.5; e) currency exchange losses; f) credits to third parties, unless otherwise specified in the Special Conditions.	This identifies the costs that, even if satisfying the abovementioned criteria, cannot be considered eligible. e) Exchange rate losses are not eligible costs and will not be compensated. It is confirmed that just as exchange rate losses are not eligible costs, exchange rate gains are not considered as Action revenue and will not be deducted in the final liquidation process (nor do have to be reported for). These rules also apply for the gains/losses resulting from currency conversion at the reporting stage and those resulting from conversion between accounting currency and other currencies used for the Action (see Art. 15.9).

19.3.2. Article 15 - Payment and interest on late payment

19.3.2.1. Payment procedures

Text of the Article	Guidelines

15.1. The Contracting Authority must pay the grant to the Coordinator following one of the payment procedures below, as set out in Article 4 of the Special Conditions. Option 1: Actions with an implementation period of 12 months or less or grant of EUR 100 000 or less (i) an initial pre-financing payment of 80 % of the maximum amount referred to in Article 3.2 of the Special Conditions (excluding contingencies); (ii) the balance of the final amount of the grant.	The frequency with which pre-financing payments are made depends on the duration of the project and on the total amount of the grant. The option applicable to the project in question will therefore be stated in Art. 4 of the Special Conditions of the contract. The contingency reserve is not considered in the payments until, and unless, approved, as it will not be disbursed if not needed. Once approved it will be reflected in the budget lines (headings 1 to 6) and therefore treated as the other budgeted/eligible costs.
Option 2: Actions with an implementation period of more than 12 months and grant of more than EUR 100 000 (i) an initial pre-financing payment of 100 % of the part of the estimated budget financed by the Contracting Authority for the first reporting period (excluding contingencies). The part of the budget financed by the Contracting Authority is calculated by applying the percentage set out in Article 3.2 of the Special Conditions; (ii) further pre-financing payments of 100 % of the part of the estimated budget financed by the Contracting Authority for the following reporting period (excluding not authorised contingencies);	Option 2 For projects which last more than 12 months and where the Contracting Authority's contribution is more than EUR 100 000, the pre-financing will be split on the basis of several reporting periods (by default 12 months, unless otherwise provided for in the Special Conditions). An initial pre-financing payment will be made after the contract has been signed by both parties (and after a financial guarantee has been submitted, if required). This payment will cover 100% of the EU contribution to budgeted costs for the first year.

- 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; - within 60 days following the end of the reporting period, the Coordinator shall present an interim report or, if unable to do so, it shall inform the Contracting Authority of the reasons and provide a summary of progress of the Action;	*Example: The EU is contributing to 50% of the total eligible costs of a project. The Budget for the first year is EUR 100 000, excluding the contingency reserve. The first instalment will be EUR 50 000, which is 100% of the foreseen EU contribution.* Further pre-financing payments are intended to be split among the reporting periods. However they are presented as a single global amount in the Special Conditions, as the actual pre-financing payments are based on the updated budget forecast for the following reporting period, as presented using the Forecast Budget and Follow-up template in Annex VI (financial reporting formats).
- if at the end of the reporting period the part of the expenditure actually incurred which is financed by the Contracting Authority is less than 70 % of the previous payment (and 100 % of any previous payments), the further pre-financing payment shall be reduced by the amount corresponding to the difference between the 70 % of the previous pre-financing payment and the part of the expenditure actually incurred which is financed by the Contracting Authority;	The Contracting Authority's percentage contribution to the forecast budget is in line with its percentage contribution to eligible costs as set out in Article 3.2 of the Special Conditions. Note that for projects where the "accepted cost system" is used, the Contracting Authority's percentage contribution to total "accepted costs" and total "eligible costs" may be different. The adjustment to ensure co-financing will be done at the end of the Action, with the final payment, according to Art. 17 of the General Conditions.

- the Coordinator may submit a request for further pre-financing payment before the end of the reporting period, when the part of the expenditure actually incurred which is financed by the Contracting Authority is more than 70 % of the previous payment (and 100 % of any previous payments). In this case, the following reporting period starts anew from the end date of the period covered by this payment request; - in addition, for grants of more than EUR 5 000 000, a further pre-financing payment may be made only if the part financed by the Contracting Authority of the of eligible costs approved is at least equal to the total amount of all the previous payments excluding the last one;	*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. 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 x 84.21% = EUR 90 543.* The Coordinator has 60 days following the end of the reporting period to present an interim report (narrative and financial, covering the elapsed reporting period).
- the total sum of pre-financing payments may not exceed 90 % of the amount referred to in Article 3.2 of the Special Conditions, excluding not authorised contingencies; (iii) the balance of the final amount of the grant. Option 3: All Actions (i) the balance of the final amount of the grant.	If at the end of the reporting period costs incurred are less than 70% of the previous payment (and 100% of any previous payments), the further pre-financing payment may not be paid in full. If the coordinator presents a payment request, the payment is reduced by the amount corresponding to the difference between the 70% of the previous pre-financing payment (and 100% of any previous payments) and the part of the expenditure actually incurred which is financed by the Contracting Authority. Alternatively, the Coordinator may present a summary of the progress of the Action, and present a payment request later 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.

	Example: An NGO 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 incurred. 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 - EUR 96 000 x 70% = EUR 67 200 and the amount actually incurred - 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 Coordinator submits a full report (narrative and financial) instead of a summary report 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), the full report is in principle treated as a summary of the progress of the Action. (A proper payment request according to art.15.3, even for EUR 0, has 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.)

	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. This is that 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 expenditure approved by the Contracting Authority. The last one can still be (partially) open (i.e. not entirely backed by approved expenditure). In principle, this situation should not materialize, given the presence of the 70% rule, it is therefore a precautionary measure for exceptional extreme situations which should not have a substantial impact on payments.
	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 total sum of pre-financing payments may not exceed 90% of the amount in Article 3.2 of the Special Conditions, excluding non-authorised contingencies. Therefore the pre-financing payments must be limited consequently when approaching the end of the Action.

	The balance of the final amount of the grant will only be payable after the end of implementation, when the final report together with a request for payment has been approved by the Contracting Authority (refer to art.15.4 for payment delays). As a reminder, in case the Beneficiary(ies) needs to borrow money, the interest on the pending balance is not eligible for EU funding; therefore the Beneficiary(ies) must be able to pre-finance it or will have to bear the costs for the advance.
	If total final expenditure is 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 Art.4 of the Special Conditions, as the Contracting Authority contribution is limited to the percentage of eligible or accepted costs, as stated in Art. 3 of the Special Conditions (see also Article 17.1 General Conditions). The maximum EU contribution and percentage of eligible or accepted costs financed by the Contracting Authority may never be increased.

19.3.2.2. Submission of final reports

Text of the Article	Guidelines
15.2. The Coordinator shall submit the final report to the Contracting Authority no later than three months after the implementation period as defined in Article 2 of the Special Conditions. The deadline for submission of the final report is extended to six months where the Coordinator does not have its headquarters in the country where the Action is implemented.	In multi-country/regional Actions managed by a Coordinator that has its headquarters in one of the countries of operation, the Coordinator may request the deadline of the final report to be extended to 6 months. This must be agreed at the contracting phase or, as a general rule, at least 1 month prior to the end of the implementation period, upon request by the Coordinator.

19.3.2.3. Payment request

Text of the Article	Guidelines
15.3. The payment request shall be drafted using the model in Annex V and shall be accompanied by: a) a narrative and financial report in line with Article 2; b) a forecast budget for the following reporting period in case of request of further pre-financing; c) an expenditure verification report or a detailed breakdown of expenditure if required under Article 15.7; For the purposes of the initial pre-financing payment, the signed contract serves as payment request. A financial guarantee shall be attached if required in the Special Conditions. Payment shall not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information provided.	The initial pre-financing payment will be made after the Contracting Authority has received a signed contract accompanied by a financial guarantee, if required in the Special Conditions. It is no longer necessary to submit a payment request with the signed contract. The further pre-financing payments will only be made if the payment request is accompanied by a narrative and financial report, a forecast budget for the following reporting period, and a detailed breakdown of expenditure or an expenditure verification report if required (see Article 15.7). Payments shall not imply recognition of the authenticity, completeness and correctness of the declarations and information provided. Audits or verifications of Actions and accounts may be done after the final payment was made and may entail a reimbursement of a part of the grant, if some costs are found to be ineligible (see Art. 18 General Conditions).

19.3.2.4. Payment deadlines

Text of the Article	Guidelines

15.4. Initial pre-financing payments shall be made within 30 days of receipt of the payment request by the Contracting Authority. Further pre-financing payments and payments of the balance shall be made within 60 days of receipt of the payment request by the Contracting Authority. However, further pre-financing payments and payments of the balance shall be made within 90 days of receipt of the payment request by the Contracting Authority in any of the following cases: a) one Beneficiary with affiliated entity(ies); b) if more than one Beneficiary is part to this Contract; c) if the Commission is not the Contracting Authority d) for grants exceeding EUR 5 000 000 The payment request is deemed accepted if there is no written reply by the Contracting Authority within the deadlines set above.	The initial pre-financing will be paid in all cases within 30 days after the Contracting Authority has received a signed contract accompanied by a financial guarantee, if required. For actions financed under the EDF, the initial pre-financing will be paid in all cases within 45 days. The further pre-financing payments and payments of the balance will be made according to the cases set, with no distinction between further pre-financing payments and payments of the balance. As a general rule there are no separate periods for the approval of the report and for the payment, unless otherwise specified in Art. 7 of the Special Conditions. The payment is due at the end of the time-limit for payment if there hasn't been any written reaction by the Contracting Authority, notifying the suspension of the payment deadline.

19.3.2.5. Suspension of the period for payments

Text of the Article	Guidelines

15.5. Without prejudice to Article 12, the Contracting Authority may suspend the time-limits for payments by notifying the Coordinator that: a) the amount indicated in its request of payments is not due, or; a) proper supporting documents have not been supplied, or; b) the Contracting Authority needs to request clarifications, modifications or additional information to the narrative or financial reports, or;	The suspension is stopped on the day the reply/clarification is recorded, i.e. the payment period starts running again as normal, even if the Contracting Authority does not look into the reply/clarification immediately (on the day of the recording). If this reply/clarification is not sufficient, the suspension can be prolonged or started again, but it has to be explicitly notified to the Coordinator.
c) the Contracting Authority needs to carry out additional checks, including on-the-spot checks to make sure that the expenditure is eligible or; d) it is necessary to verify whether presumed substantial errors, irregularities, fraud have occurred in the grant award procedure or the implementation of the Action. e) it is necessary to verify whether the Beneficiary(ies) have breached any substantial obligations under this Contract.	
The suspension of the time-limits for payments starts when the above notification is sent by the Contracting Authority to the Coordinator. The time-limit starts running again on the date on which a correctly formulated request for payment is recorded. The Coordinator shall provide any requested information, clarification or document within 30 days of the request.	

If, notwithstanding the information, clarification or document provided by the Coordinator, the payment request is still inadmissible, or if the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, or breach of obligations, then the Contracting Authority may refuse to proceed further with payments and may, in the cases foreseen in Article 12, terminate accordingly this Contract. In addition, the Contracting Authority may also suspend payments as a precautionary measure without prior notice, prior to, or instead of, terminating this Contract as provided for in Article 12.	

19.3.2.6. Interest on late payment

Text of the Article	Guidelines

15.6. If the Contracting Authority pays the coordinator after the time limit, it shall pay default interest as follows: a) at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country; b) at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro, on the first day of the month in which the time-limit expired, plus three and a half percentage points. The interest will be payable for the time elapsed between the expiry of the payment deadline and the date on which the Contracting Authority's account is debited. By way of exception, when the interest calculated in accordance with this provision is lower than or equal to EUR 200, it will be paid to the Coordinator only upon demand submitted within two months of receiving late payment. The default interest is not considered as income for the purposes of Article 17.2. This Article 15.6 does not apply if the coordinator is a European Union Member State, including regional and local government authorities or other public body acting in the name and on behalf of the Member State for the purpose of the Contract.	Interest on late payment is paid usually by default by the Contracting Authority, if it amounts to more than EUR 200. When the Contracting Authority is a Beneficiary country (decentralised management), the Coordinator has to submit a claim within two months of receiving late payment. A specific clause is inserted in the Special Conditions. The Coordinator makes the calculation and presents the request, and the Contracting Authority at that point will then verify the calculation and pay the appropriate amount. Note that the interest is payable for the time elapsed between the expiry of the payment deadline and the date on which the Contracting Authority's account is debited.

19.3.2.7. Expenditure verification report

Text of the Article	Guidelines

15.7. The Coordinator must provide an expenditure verification report for: a) any request for further pre-financing payment in case of grants of more than EUR 5 000 000; b) any final report in the case of a grant of more than EUR 100 000. The expenditure verification report shall conform to the model in Annex VII and shall be produced by an auditor approved or chosen by the Contracting Authority. The auditor shall meet the requirements set out in the Terms of Reference for expenditure verification in Annex VII.	Expenditure verification report (EVR) The terms of reference and template for the expenditure verification report set out in Annex VII of the Contract are compulsory for all Actions, when an EVR is requested. When the grant is more than EUR 5 000 000, an expenditure verification report, covering the entire project accounts (EU, other donors and the Grant Beneficiary 's contributions) and produced by an approved external auditor, must be submitted together with each payment request. Each expenditure verification report must cover all expenses incurred since the end of the previous reporting period and not covered by the previous expenditure verification report.
The auditor shall examine whether the costs declared by the Beneficiary(ies) and the revenue of the Action are real, accurately recorded and eligible under this Contract. The expenditure verification report shall cover all expenditure not covered by any previous expenditure verification report. If no expenditure verification is required, a detailed breakdown of expenditure covering the preceding reporting periods not already covered, shall be provided for every other request for further pre-financing payment and starting with the second request for further pre-financing payment (i.e. 3rd, 5th,7th… pre-financing payment).	As a general rule, it is up to the Coordinator to contract the audit firm (according to Annex IV), which must be a member of an internationally recognised supervisory body of statutory auditors (for more details refer to Annex VII). The name of the auditor is indicated in Art.5 of the Special Conditions of the contract, and may be changed through a written notification (not a formal amendment request) to the Contracting Authority, which reserves the right to oppose to this change (see Article 9.5). Therefore the name of the auditor should be communicated prior to contract signature, during contract preparation stage.

The detailed breakdown of expenditure should provide the following information for each cost heading in the financial report and for all underlying entries and transactions: amount of the entry or transaction, accounting reference (e.g. ledger, journal or other relevant reference) description of the entry or transaction (detailing the nature of the expenditure) and reference to underlying documents (e.g. invoice number, salary slip or other relevant reference), in line with Article 16.1. It shall be provided in electronic form and spread sheet format (excel or similar) whenever possible. The detailed breakdown of expenditure shall be supported by a declaration of honour by the Coordinator that the information in the payment request is full, reliable and true and that the costs declared have been incurred and can be considered as eligible in accordance to this Contract.	However, in some cases the Contracting Authority might have its own audit and/or verification system, in order to ensure an appropriate degree of quality and reliability of the verification. For instance, for the EVR they could require the Coordinator to use one specific audit firm (or one out of a pool) that has been previously selected in in conformance with the applicable procurement rules. If this is the case, specific instructions are inserted in the Call for Proposals section 2.1.5 (e.g.: name or list of auditors, pre-negotiated prices, details for the verification etc.). When the expenditure verification is required by the contract, it constitutes an eligible cost of the Action.
The final report shall in all cases include a detailed breakdown of expenditure covering the whole Action. Where the Coordinator is a government department or a public body, the Contracting Authority may accept to substitute the expenditure verification with a detailed breakdown of expenditure. The expenditure verification report shall not be provided by the Coordinator if the verification is directly done by the Contracting Authority's own staff, by the Commission or by a body authorised to do so on their behalf, according to Article of 5.2 of the Special Conditions.	The verification may also be done directly by the Contracting Authority's own staff, by the Commission, or by a body authorised to do so on their behalf. This option is specified in the Call for proposals and formalised in Article of 5.2 of the Special Conditions. The auditors should not limit themselves to vague declarations that they have verified the eligibility of the costs, they have to declare explicitly that they certify that these costs are "real, accurate and eligible", i.e. adopt a stricter, specific and not ambiguous formulation. Detailed breakdown of expenditure (DBE)

	For grants up to EUR 5 000 000 and above EUR 100 000, an expenditure verification report covering the entire implementation period and project accounts (EU, other donors and the Grant Beneficiary's contributions) is only required to be submitted along with the final report but a detailed breakdown of expenditure has to be provided with the 3rd, 5th,7th… pre-financing payments.
	There is no standard template for the detailed breakdown of expenditure. However the following information for each cost heading in the financial report and for all underlying entries and transactions should be provided: - the amount of the entry or transaction - the accounting reference (e.g. ledger, journal or other relevant reference) - a description of the entry or transaction (detailing the nature of the expenditure) - a reference to underlying documents (e.g. invoice number, salary slip or other relevant reference).

	This information may, and should, be easily derived from the accounting documents (ex. nominal ledger or T accounts). Therefore, when derived directly from the accountancy, amounts may be in the currency of the accountancy. It shall be provided in electronic form and spread sheet format (excel or similar) whenever possible. The declaration of honour supporting the DBE is already included in the payment request (Annex V). By signing this the Coordinator declares on its honour that all the information provided is full, reliable and true and that the costs declared have been incurred and can be considered as eligible in accordance to the provisions of the Contract.
	In case no payment request is presented with the final report, a declaration of honour supporting the DBE and all reports has to be provided separately. (See table below) Where the Coordinator is a government department or a public body, the Contracting Authority may accept to substitute the EVR with a DBE, though it must ensure conformance with the same frequency prescribed above for the EVR.
	Example: Public body and grant of EUR 6 mil: the DBE has to be presented with every payment request. When International Organisations whose pillars have been positively assessed participate into a grant contract, that part of expenditure that they incur has to be supported only by the DBE, though it must ensure compliance with the same frequency prescribed above for the EVR.

	2nd pre-financing payment	3rd pre-financing payment	4th pre-financing payment	5th pre-financing payment	…. pre-financing payment	Final Report
Grant > EUR 5 Mil	EVR covering the preceding reporting periods not already covered	EVR covering the preceding reporting periods not already covered	EVR covering the preceding reporting periods not already covered	EVR covering the preceding reporting periods not already covered	EVR covering the preceding reporting periods not already covered	EVR covering the preceding reporting periods not already covered + DBE covering entire action
Grant <= EUR 5 Mil and > EUR 100 k	-	DBE covering the preceding reporting periods not already covered	-	DBE covering the preceding reporting periods not already covered	-	EVR covering entire Action DBE covering entire Action
Grant <= EUR 100 k	-	-	-	-	-	DBE covering entire Action

19.3.2.8. Financial guarantee

Text of the Article	Guidelines

15.8. If the grant exceeds EUR 60 000 the Contracting Authority may request a financial guarantee for the amount of the initial pre-financing payment. The guarantee shall be denominated in euro or in the currency of the Contracting Authority, conforming to the model in Annex VIII and, unless the Contracting Authority agrees otherwise, provided by an approved bank or financial institution established in one of the Member States of the European Union. This guarantee shall remain in force until its release by the Contracting Authority when the payment of the balance is made.	In most cases a financial guarantee will no longer be required, unless it brings a clear added value to the protection of the EU budget. The Contracting Authority may, if it considers it appropriate on the basis of its risk assessment, require the Coordinator to lodge a guarantee to limit the risks linked with the payment of pre-financing.
This provision shall not apply if the Coordinator is a non-profit organisation, an organisation which has signed a framework partnership agreement with the European Commission, a government department or public body, unless otherwise stipulated in the Special Conditions.	In such a case, when the guarantee is not required in the Call for Proposal, and it is requested only before signature of the grant contract by the Contracting Authority, the related estimated costs are to be added as estimated direct eligible cost in the budget (as they were not included in the budget as submitted by the applicant). The budget will be increased of the correspondent amount (not affecting the contingency reserve). The amount of the guarantee is at most equal to the amount of the initial pre-financing payment and will not be adjusted during the Action, although the Contracting Authority may decide to reduce it, or release it, pursuant to its risk assessment. Otherwise, as a general rule it will remain in force until its release by the Contracting Authority when the payment of the balance is made.

	There are no more automatic triggering thresholds in terms of the value of pre-financing of its share in the total amount of the grant. The Contracting Authority has to be able to justify the request for guarantee, which is an administrative charge, against the risk to the EU budget in the payment of pre-financing. A financial guarantee may not be requested: - for grants up to EUR 60 000 - when the Coordinator is an International Organisation whose pillars have been positively assessed, as provided for in art. 7.3 of the Special Conditions of the Contract.
	When the financial guarantee is required by the contract, it constitutes an eligible cost of the Action. The cost for issuing and maintaining a bank guarantee complying with the requirements of the contract is considered to be incurred with relation to the implementation period of the contract, even if maintained in place after the end of the implementation period. In some cases a bank guarantee may be avoided by agreeing with the Contracting Authority at the contract preparation stage to adjust the amount of pre-financing.

19.3.2.9. Rules for currency conversion

Text of the Article	Guidelines

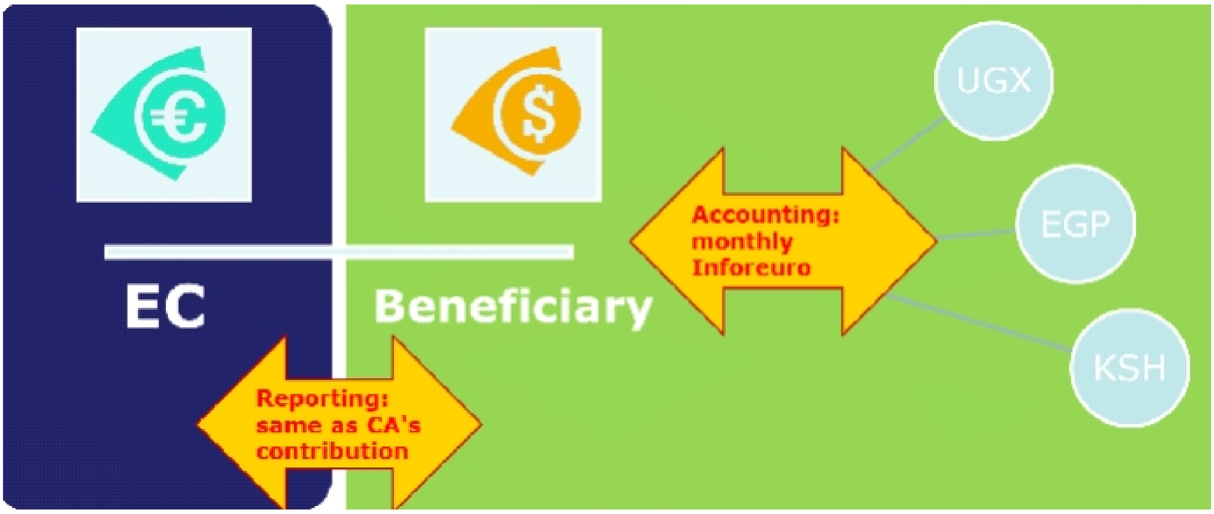
15.9. The Contracting Authority shall make payments to the Coordinator to the bank account referred to in the financial identification form in Annex V, which allows the identification of the funds paid by the Contracting Authority. The Contracting Authority shall make payments in euro or in the currency of the country to which it belongs, in accordance with the currency set in the Special Conditions.	The Grant Beneficiary has to provide details of the bank account or sub-account into which the EU funds will be paid. It is not necessary to open a project-specific account provided the Contracting Authority's contribution and the project financial flows can be traced. There is no obligation to open interest-bearing accounts for projects financed by the EU BUDGET, nor to report on or repay the interest earned.
Reports shall be submitted in the currency set out in the Special Conditions, and may be drawn from financial statements denominated in other currencies, on the basis of the Beneficiary(ies)'s applicable legislation and applicable accounting standards. In such case and for the purpose of reporting, conversion into the currency set in the Special Conditions shall be made using the rate of exchange at which the Contracting Authority 's contribution was recorded in the Beneficiary(ies)'s accounts, unless otherwise provided for in the Special Conditions. Costs incurred in other currencies than the one used in the Beneficiary(ies)'s accounts shall be converted using the monthly Inforeuro on the date of payment or according to its usual accounting practices if so provided for in the Special Conditions.	However this obligation regarding interest still exists for projects financed by the EDF, unless falling under the conditions set out under Art.7.2 of the Special Conditions. In particular, there is no such obligation in the case of redistribution of the pre-financing by the Coordinator to the other Beneficiary(ies) or Affiliated Entity(ies). Even in cases when there is an obligation to open interest-bearing accounts, in countries where it is impossible to do so (e.g. an Islamic banking system) or if the costs for opening and/or maintaining an interest-bearing account equals or exceeds the expected interest, applicants may be exempted from this obligation by submitting a declaration of honour to this fact. This exemption has to be inserted in the Special Conditions.

In the event of an exceptional exchange-rate fluctuation, the Parties shall consult each other with a view to amending the Action in order to lessen the impact of such a fluctuation. Where necessary, the Contracting Authority may take additional measures such as terminating the Contract.	<u>Exchange rate for Reporting</u> NB: This provision applies only for the Grant Beneficiary having their accounting in a currency different from the one of the contract (usually EUR, but not in all cases: refer to Special Conditions). In the other cases there is no need to convert currencies as the books of account and the financial report are already in the currency of the contract. In order to reduce exchange rate differences and for reporting purposes only, in the case of books of account in a currency other than the one of the contract, the costs have to be converted using the same exchange rate as that used when the Contracting Authority 's pre-financing payment was recorded in the Grant Beneficiary's(ies') accounts.
	If the Coordinator prefers to apply another currency approach, this must be agreed during contract preparation stage and reflected in the Special Conditions. At the time of reporting, this exchange rate will then be used to convert all expenses in the reporting period into the currency of the contract. The conversion does not have to be done individually for each foreign currency in the accounting nor directly from the currency of expenditure. The rate is applied to the total of each budget line as resulting by the balance of the accounts, and the unit values may be derived accordingly.

	Example: pre-financing payment of EUR100 000 recorded as USD 120 000 in the Grant Beneficiary's(ies) accounts. *At the end of the reporting period, the financial report drawn from financial statements denominated in USD amounts to USD 90 000. The report sent to the Contracting Authority will amount to EUR 75 000.* If there is a carry-over balance from a prior pre-financing, the expenditure is first converted into Euro using the exchange rate used when this prior pre-financing was recorded, until exhaustion of this balance. Then, the exchange rate of the following instalment will be used.
	Exchange rate for Accounting This rule has to be applied to record costs in the Beneficiary's(ies') or Affiliated Entity's(ies') accounts. The standard rates to be used to convert actual expenditure incurred in other currencies are based on the monthly InforEuro rate on the date of payment as published on: http://ec.europa.eu/budget/inforeuro/index.cfm In order to further reduce exchange rate differences the Beneficiary(ies) and/or Affiliated Entity(ies) may request - at the proposal stage - to use their usual accounting practices, provided this is agreed by the Contracting Authority, as specified in Art. 7 of the Special Conditions.

	The Beneficiary(ies) may request to use a different rate (other than the monthly Inforeuro), according to its usual accounting practices, but this has to be agreed with the Contracting Authority and it has to be provided for in the Special Conditions. As a general rule, the accounting practices of the Beneficiary(ies) for the conversion have to respect the following basic requirements: - they are written down as an accounting rule, i.e. they are a standard practice of the Beneficiary(ies) or Affiliated Entity(ies) - they are applied consistently - they give equal treatment to all types of transactions and funding sources - the system can be demonstrated and the exchange rates are easily accessible for verifications
	For verification purposes, the exchange rate used for recording expenses in the accounts, together with the generated value, should be stamped on the original documents. In any case the Beneficiary(ies) must be able to demonstrate it and the accounting system allow for easy verification of the rates used and how the conversion is operated. There is no specific definition of an exceptional exchange-rate fluctuation.

	Depending on the impact of the fluctuation on the implementation of the Action, different remedial Actions may be envisaged: a) restructuring of the Action - for example, one project component could be removed/modified b) suspension or termination of the contract c) use of the contingency reserve Refer also to Art. 14.6 for the use of the contingency reserve.



19.3.3. Article 16 - Accounts and technical and financial checks

19.3.3.1. Accounts

Text of the Article	Guidelines
16.1. The Beneficiary(ies) shall keep accurate and regular accounts of the implementation of the Action using an appropriate accounting and double-entry book-keeping system.	The Grant Beneficiary(ies) and Affiliated Entity(ies) should follow professional and recognised standards for book-keeping and accounting systems and must use double entry book-keeping systems to manage EU funds.

The accounts: a) may be an integrated part of or an adjunct to the Beneficiary(ies)'s regular system; b) shall comply with the accounting and bookkeeping policies and rules that apply in the country concerned; c) shall enable income and expenditure relating to the Action to be easily traced, identified and verified.	There is no obligation to translate all the supporting documents in the language of the contract or in any European language (see Art.2 for more information). <u>Reconciliation of information in the Financial Report and audit / accounting trail</u> Expenditure relating to the Action must be easily identifiable and verifiable. This can be done by using separate accounts for the Action concerned or by ensuring that expenditure for the Action concerned can be easily identified and traced to, and within, the Beneficiary's accounting and bookkeeping systems. When interest reporting is required by the contract conditions, the accounts must provide details of interest accruing on funds paid by the Contracting Authority.
	The Coordinator must put in place the relevant control instruments and agreements with the Beneficiary(ies) and/or Affiliated Entity(ies) to be able to ensure that the financial reports (both interim and final) as required under Article 2 can be properly and easily reconciled to each one's accounting and bookkeeping systems and to the underlying accounting and other relevant records. For this purpose the Coordinator, in cooperation with the Beneficiary(ies) and the Affiliated Entity(ies) shall prepare and keep appropriate reconciliations, supporting schedules, analyses, and breakdowns for inspection and verification.

	The Commission provides a "Financial Management Toolkit" for recipients of EU funds for external actions. This toolkit aims to help recipients of EU funds for external actions to comply with the conditions for financial management set out in contracts for EU-financed external actions. Module 8 of this toolkit provides guidance and support with regard to financial reporting (it also includes a financial reporting checklist). Beneficiaries are strongly recommended to refer to this Module. http://ec.europa.eu/europeaid/work/procedures/financial-management-toolkit_en.htm
16.2. The coordinator shall ensure that any financial report as required under Article 2 can be properly and easily reconciled to the accounting and bookkeeping system and to the underlying accounting and other relevant records. For this purpose the Beneficiary(ies) shall prepare and keep appropriate reconciliations, supporting schedules, analyses and breakdowns for inspection and verification.	

19.3.3.2. Right of access

Text of the Article	Guidelines

16.3. The Beneficiary(ies) shall allow verifications to be carried out by the European Commission, the European Anti-Fraud Office, the European Court of Auditors and any external auditor authorised by the Contracting Authority. The Beneficiary(ies) has to take all steps to facilitate their work.	All Beneficiary(ies), Affiliated Entity(ies), contractors, and recipients of financial support receiving funds from the European Commission, have to allow easy access to all documents and systems used to manage the project to personnel from the European Commission, European Anti-Fraud Office, the European Court of Auditors and any external auditor carrying out verifications/audits of the project. They will require access to documents in the country where the project is operational, and at the Head Office, as appropriate. The Coordinator has to take all measures possible to facilitate the verifications and promptly provide the required information.
16.4. The Beneficiary(ies) shall allow the above entities to: a) access the sites and locations at which the Action is implemented; b) examine its accounting and information systems, documents and databases concerning the technical and financial management of the Action; c) take copies of documents; d) carry out on the-spot-checks; e) conduct a full audit on the basis of all accounting documents and any other document relevant to the financing of the Action;	

16.5. Additionally the European Anti-Fraud Office shall be allowed to carry out on-the-spot checks and inspections in accordance with the procedures laid down by the European Union legislation for the protection of the financial interests of the European Union against fraud and other irregularities. Where appropriate, the findings may lead to recovery by the Commission.	
16.6. Access given to agents of the European Commission, European Anti-Fraud Office and the European Court of Auditors and to any external auditor authorised by the Contracting Authority carrying out verifications as provided for by this Article as well as by Article 15.7 shall be on the basis of confidentiality with respect to third parties, without prejudice to the obligations of public law to which they are subject.	The information provided to the Commission will be confidential and not shared openly with other organisations, without prejudice to the obligations of public law to which the agents are subject to.

19.3.3.3. Record keeping

Text of the Article	Guidelines

16.7. The Beneficiary(ies) shall keep all records, accounting and supporting documents related to this Contract for five years following the payment of the balance and for three years in case of grants not exceeding EUR 60 000, and in any case until any on-going audit, verification, appeal, litigation or pursuit of claim has been disposed of. They shall be easily accessible and filed so as to facilitate their examination and the Coordinator shall inform the Contracting Authority of their precise location.	All the relevant information has to be kept for 5 (or 3 if grant is less than EUR 60 000) years after the payment of the balance, the repayment (Art. 18.4), or the offsetting (Art. 18.6), whichever occurs last, and even if it's not a requirement of the country where the activities are implemented. This applies to the Beneficiary(ies), Affiliated Entity(ies), contractors, and recipients of financial support that take part to or receive funds from the EC-funded Action. The Coordinator has to make sure that Beneficiary(ies), Affiliated Entity(ies), contractors, and recipients of financial support are made aware of this obligation by including in contracts or MOUs a provision for the record-keeping and which authorises audits and verifications in accordance with Art.16.
	Location of supporting documents This is often an important issue in audits/verifications, particularly in cases where activities are dispersed over various and sometimes remote locations within the same country or in various countries. Many national regulations may require any legal entity to maintain originals of accounting documents (e.g. invoices and tax documentation) in the country where the entity is registered.

	The Coordinator bears the financial responsibility towards the Contracting Authority in case adequate supporting documents are not provided (in a timely manner) and/or costs are declared ineligible, including with regards to co-Beneficiary(ies), Affiliated Entity(ies), contractors, or recipients of financial support. The Coordinator has to put in place control systems to ensure that costs are eligible according to the Contract. It is thus recommended that copies of the supporting documentation related to disperse activities be kept by the Coordinator at a central location (without prejudice to the fact that the Contracting Authority or auditors may request to consult the original documentation). Data stored in electronic form in computerised information systems should be accessible from this location.
	The Coordinator must inform the Contracting Authority in the final report (Annex VI, point 5) of the location(s) of the above mentioned systems and documents. This is to plan and carry out efficiently subsequent audits or verifications, and to avoid costs being declared ineligible simply because the documentation is not available in a reasonable time. The Coordinator should inform the Contracting Authority of any changes in the location(s) at a later stage, and must update this information if necessary, as soon as a request for audit is sent. The unavailability of the supporting documents at the declared location(s) may per se entail the ineligibility of costs.

	Where local legislation requires Beneficiary(ies), Affiliated Entity(ies), contractors, or recipients of financial support to retain original documentation on their premises, the Coordinator must to be able to check this, and should ensure in advance the existence of established internal control systems to ensure that costs are eligible according to the Contract. The Coordinator remains responsible for the eligibility of all project expenditure reported in the Financial Report.
	If necessary, the Contracting Authority may request the Coordinator to make the above mentioned systems and original documents available for inspection at one central location (for example the Coordinator's headquarters) inside or outside the country where the Action is implemented. The Coordinator should duly inform the Contracting Authority about any legal or other restrictions that apply or may apply to the transfer of the above mentioned systems and documents.

16.8. All the supporting documents shall be available in the original form, including in electronic form.	The Beneficiary(ies) must maintain information systems and accounts and accounting records, and keep all supporting documents, both financial and technical, relating to the Action. The supporting documents should be the originals. Records, and accounting and supporting documents, must be available in documentary form, whether paper, electronic or another medium (e.g. a written record of a meeting is more reliable than an oral presentation of the matters discussed). Electronic documents can be accepted only where: a. the documentation was first received or created (e.g. an order form or confirmation) by the Beneficiary(ies) in electronic form; or b. the Auditor is satisfied that the Beneficiary(ies) uses an electronic archiving system which meets established standards (e.g. a certified system which complies with national law).
16.9. In addition to the reports mentioned in Article 2, the documents referred to in this Article include:	This Article provides the minimum requirements and examples of the types of documents that need to be kept. However, it is the responsibility of the Grant Beneficiary(ies) to provide any other necessary or relevant evidence in support of expenditure, according to applicable standards. The list is not exhaustive, and documents referring to the proper functioning of the Beneficiary (related laws and contracts, authorisation of signatures, minutes of board meetings, accounting and staff policies etc.) may also be requested for inspection.

a) Accounting records (computerised or manual) from the Beneficiary(ies)'s accounting system such as general ledger, sub-ledgers and payroll accounts, fixed assets registers and other relevant accounting information; b) Proof of procurement procedures such as tendering documents, bids from tenderers and evaluation reports;	It strongly advised that the Coordinator verify the compliance and completeness of these documents continuously during the implementation of the Action, and keep relevant copies. The turnover of staff and the time elapsing until the end of the Action or the occurrence of an audit, can make it difficult - sometimes impossible - to retrieve the necessary missing information and justify eligible expenditure.
c) Proof of commitments such as contracts and order forms; d) Proof of delivery of services such as approved reports, time sheets, transport tickets, proof of attending seminars, conferences and training courses (including relevant documentation and material obtained, certificates) etc; e) Proof of receipt of goods such as delivery slips from suppliers; f) Proof of completion of works, such as acceptance certificates;	Procurement: All paperwork related to procurement undertaken for all work, supply and service contracts (Art.10) have to be available to verify that all the purchases have been done following the applicable procurement rules. It is therefore advisable to file together all the documents that can prove that the rules have been complied with: the consultation of the market, the tender dossier, the bids from the candidates, the result of the evaluation, etc…
g) Proof of purchase such as invoices and receipts; h) Proof of payment such as bank statements, debit notices, proof of settlement by the contractor; i) Proof that taxes and/or VAT that have been paid cannot actually be reclaimed; j) For fuel and oil expenses, a summary list of the distance covered, the average consumption of the vehicles used, fuel costs and maintenance costs;	Staff costs: Make sure that clear records of all local staff and expatriate staff costs that relate to the project are kept. Information that should be kept includes the working contract and the details of calculation from gross salary to net salary including relevant social security and insurance contributions. All these costs must be documented for the Grant Beneficiary(ies) and Affiliated Entity(ies). Lack of documentation and/or access to payroll information is a frequent source of cost ineligibility.

k) Staff and payroll records such as contracts, salary statements and time sheets. For local staff recruited on fixed-term contracts, details of remuneration paid, duly substantiated by the person in charge locally, broken down into gross salary, social security charges, insurance and net salary. For expatriate and/or European-based staff (if the Action is implemented in Europe) analyses and breakdowns of expenditure per month of actual work, assessed on the basis of unit prices per verifiable block of time worked and broken down into gross salary, social security charges, insurance and net salary.	Note that for expatriate (based in country) or HQ-based staff, and in addition to the above information, a more detailed record of how much time the person has spent working on the project per month must be kept. Signed and approved time-sheets are the soundest way to demonstrate the distribution of a person along the different projects he/she worked for. In the case of a consultant hired for a specific period of time for the project, the contract should give all the relevant information concerning their participation in the project. NB: the hiring of consultants is usually a type of service contract and therefore, in order to recruit them, the rules described in Annex IV apply (see Art.14.4 a) for further guidance).
	<u>Taxes</u> In all cases (whether taxes are eligible or ineligible), Beneficiaries (and their Affiliated Entity(ies) if applicable) must document the fact that they cannot recover taxes nor obtain an exemption under the applicable national law. This proof does not need to be submitted by default to the Contracting Authority but must be available on request, and must be available to auditors during the expenditure verification report or audit. Refer to Annex J for further information on required evidence. A "self-certification" would not be sufficient to demonstrate impossibility to get exempted or reimbursed, an "external" confirmation is needed: extract of law, notification by tax authorities, etc.

	Boarding passes Air fares must be substantiated by the passenger receipt and proof of payment. Exceptionally, for circumstances where "traditional" original boarding passes are not provided by the airline company, other adequate alternative and/or corroborative evidence may be accepted (attendance list of a conference, hotel bills, credit card accounts, copy of passport entry/exit stamps, declaration on honour, etc.) provided that the person concerned undertakes not to have been or be refunded by any other means of this expense.
	Financial support (including Subgranting) The supporting documents for FS depend on the purpose of the sub-grant, the type of sub-grant chosen (unit costs, lump-sum, flat-rate, reimbursement of actual incurred costs etc.) as explained in the description of the Action. As a general indication this should include the agreement or contract, and proof that the funds of been received and that the activity for which the sub-grant is given has taken place.

	Any other supporting document as agreed in the contract is acceptable; it does not necessarily have to be the usual "grant" supporting documents (invoices, pay slips etc), since the same cost eligibility rules that cover grant Beneficiaries do not necessarily apply (this is also why it is better to make use of the correct terminology of "financial support" instead of subgranting, when the FS does not take the form of a sub-grant). The Contracting Authority and the Grant Beneficiary(ies) should determine what is more appropriate. It is strongly recommended to describe this in detail as much as possible in the contract, so that at the end of the Action or reporting period the Contracting Authority is satisfied and the Beneficiaries do not subsequently have problems with auditors. It is best practice, during information sessions, to suggest to potential applicants to already come up with proposals for justifying the FS given.
	Example: the F.S. was established to pay an amount following the realisation of a specific event, or to returnees just to return to their country. In these cases, a proof of the accomplishment of the event or the settling back to the place of origin may be proved other than with invoices or so. ---- This Article indicates which type of supporting documents might be accepted in accordance with a purpose of harmonisation and clarity. If, for duly justified reasons, such documents cannot be produced, an explanation should be provided and a reasoned decision will be taken on a case-by-case basis by the Contracting Authority, with the advice of the auditors as appropriate.

19.3.4. Article 17 - Final amount of the grant

19.3.4.1. Final amount

Text of the Article	Guidelines
17.1. The grant may not exceed the maximum ceiling in Article 3.2 of the Special Conditions either in terms of the absolute value or the percentage stated therein. If the eligible costs of the Action at the end of the Action are less than the estimated eligible costs as referred to in Article 3.1 of the Special Conditions, the grant shall be limited to 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.	The Special Conditions define a maximum grant amount that can never be exceeded, and a % contribution to eligible costs (as well as "accepted costs" when the accepted cost system has been introduced guidelines for applicants; see Art. 14.2 g). The % contribution stems from the principle of co-financing, which requires that the resources necessary for the implementation of the Action are not entirely provided by the EU.
	Accordingly these funds from other sources may take the form of: - the Beneficiary(ies)'s own contribution - income generated by the Action (if relevant an estimate should be provided at proposal stage; it must be confirmed when the request for payment of the balance is submitted) - financial or in-kind contributions by other donors In order to avoid double funding of the same costs, the Coordinator must indicate the sources and amounts of Union funding received or applied for the same Action or part of the Action or for its functioning during the same financial year, as well as any other funding received or applied for the same Action.

	The Coordinator has to declare the co-financing actually provided in the final report, but no evidence is needed. The determination of the final amount of the grant is based on the final reports approved by the Contracting Authority. The first step to be taken is the validation of these reports and the verification of the compliance with the provisions of the contract. The final amount of the grant will depend on the approved eligible costs. The verification of the eligibility of costs is done on the basis of Art. 14 of the General Conditions.
	If applicable, for eligible costs reimbursed on the basis of simplified cost options, the eligible costs are determined solely on the qualitative and quantitative evidence necessary to verify compliance with the conditions for the payment defined in the description of the Action (notably the justification sheet of the budget, but also the description of the Action). In the case of partial fulfilment of the conditions, a pro rata may be applied to the final payment in accordance with the effective realisation. When funding is determined on the basis of unit costs the adjustment is automatic, and is calculated simply by multiplying the unit cost by the number of units consumed or produced.

	For lump sums or flat-rates, the correction applied may be more difficult to determine. Therefore, to avoid litigation, it is strongly recommended to agree during the contract preparation stage and then to specify clearly in the contract: - the conditions for the payment - how reductions will be applied when only partial fulfilment of these conditions is attained. It is important that the review of the narrative report and final financial statement occurs in a coordinated manner because to be eligible the costs reported must correspond to an actual implementation of the Action, as provided by the contract.
	In addition, regardless of the costs incurred, the grant may be reduced in case of non-implementation or poor, partial or late execution (Art. 17.2 of the General Conditions). The provisional amount of EU funding is calculated by application of the set percentage of co-financing of eligible costs specified in Article 3.2 the Special Conditions to the eligible costs declared with the request for payment of the balance and approved by the Contracting Authority. a) If the approved eligible costs are less than the estimated eligible costs as referred to in Article 3.1 of the Special Conditions, the grant is limited to this amount.

	b) If the approved eligible costs exceed the estimated eligible costs as referred to in Article 3.1 of the Special Conditions, the grant is limited to the maximum contribution expressed in terms of the absolute value in Art. 3.2 of the Special Conditions, and the Grant Beneficiary will have to bear the exceeding costs. If a clause in the Special Conditions (Art.7) provides for the "Accepted cost system", the grant is further limited to a percentage of the total accepted cost of the Action (and not only to a % of eligible costs, i.e. the smaller of the two values obtained by application of both percentages apply)
	Example: If total final expenditure is less than originally foreseen and/or the reserve has not been used, the final payment will be less than the amount stated in Art.4 of the Special Conditions, as the Contracting Authority contribution will be limited to the percentage of eligible or accepted costs, as stated in Art. 3 of the Special Conditions (see also Article 17.2).
	Example: Total budgeted costs are EUR 500 000 of which the Contracting Authority has agreed to contribute to 80% - i.e. EUR 400 000. It is stated in the Special Conditions that a final instalment of EUR 40 000 will be paid as the balance. However, at the end of the project, total reported expenditure is only EUR 475 000. The EU will pay 80% of this, i.e. EUR 380 000. The grant Beneficiary has already received EUR 360,000, so the balance to be paid is only EUR 20,000. The maximum EU contribution and percentage of eligible or accepted costs financed by the Contracting Authority may never be increased.

17.2 In addition and without prejudice to its right to terminate this Contract pursuant to Article 12, if the Action is not implemented or is implemented poorly, partially or late, the Contracting Authority may, by a duly reasoned decision and after allowing the Beneficiary to submit its observations, reduce the initial grant in line with the actual implementation of the Action and in accordance with the terms of this Contract.	This Article states the principle of the "obligation of results". Without prejudice to Article 12, the Contracting Authority can terminate a contract if the Grant Beneficiary(ies) does/do not: - Implement the project as a whole, making sure all the activities indicated in the original proposal, and the overall objective and results, have been achieved, as approved by the Contracting Authority and stated in the contract.
	- Make sure that the implementation of the project is of good quality; that all the activities are carried out in the timeframe stipulated in the contract, and that they are carried out with all the due diligence. If only part of the Action has been implemented, the Contracting Authority may reduce the grant proportionally (e.g. if the Action has reached only 80% of the planned results, the grant may be reduced by 20%, even if 100% of the budget was spent) and taking into due consideration the observations of the Beneficiary(ies). "Proportionally" does not simply and only refer to a mere financial value or execution of activities: if the missing parts of the Action were crucial to its overall implementation, the Contracting Authority may decide to reduce its contribution beyond the mere financial value of these missing parts.

	Example: an action consisted of a series of regional workshops culminating in a national conference, due to develop a common national strategy in a given field. The regional workshops took place but not the national one. The action had been selected for funding because of that national approach, and the lack of it renders the regional workshops useless. The contracting authority might decide not to fund all or parts of the costs of the regional workshops as these were not the crucial element of the action, going beyond a mere deduction of the cost of the national conference.
	For this reason it is fundamental to set clear and realistic indicators and results in the initial proposal/contract and to subsequently: 1 - inform the Contracting Authority immediately about any problems in the implementation of the Action or any delays which might jeopardise the achievement of the results 2 - make sure to get Contracting Authority's approval before making changes that may affect the basic purpose of the Action, and make sure that these are duly reflected in the amended contract (see also Article 9). Continuous dialogue and pro-active feedback should take place throughout the project's implementation. Such exchanges facilitate a better understanding of the difficulties encountered during the implementation and facilitate prompt decisions on mitigating measures (e.g. possible amendments to agreement/strategy, etc.).

19.3.4.2. No profit

Text of the Article	Guidelines
17.3. The grant may not produce a profit for the Beneficiary(ies), 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.	The final amount of the Contracting Authority's 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. 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 contract.
17.4. 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 Coordinator 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 this Contract. Any financial contribution that may be used by the Beneficiary(ies) to cover costs other than those eligible under this contract 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 grant produces a profit for the Beneficiary(ies).	At the time of the request for payment of the balance the Coordinator 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 recipient 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 foresee otherwise, i.e. where the purpose of the Action is to generate an income, see Art. 17.7 General Conditions). NB. If revenue is generated by the Action, it is not deducted from the approved eligible costs, but it is considered as a receipt for the purposes of the application of the no-profit rule. b) the financial contributions of others donors which are specifically used to finance the same eligible costs of the Action (see below).

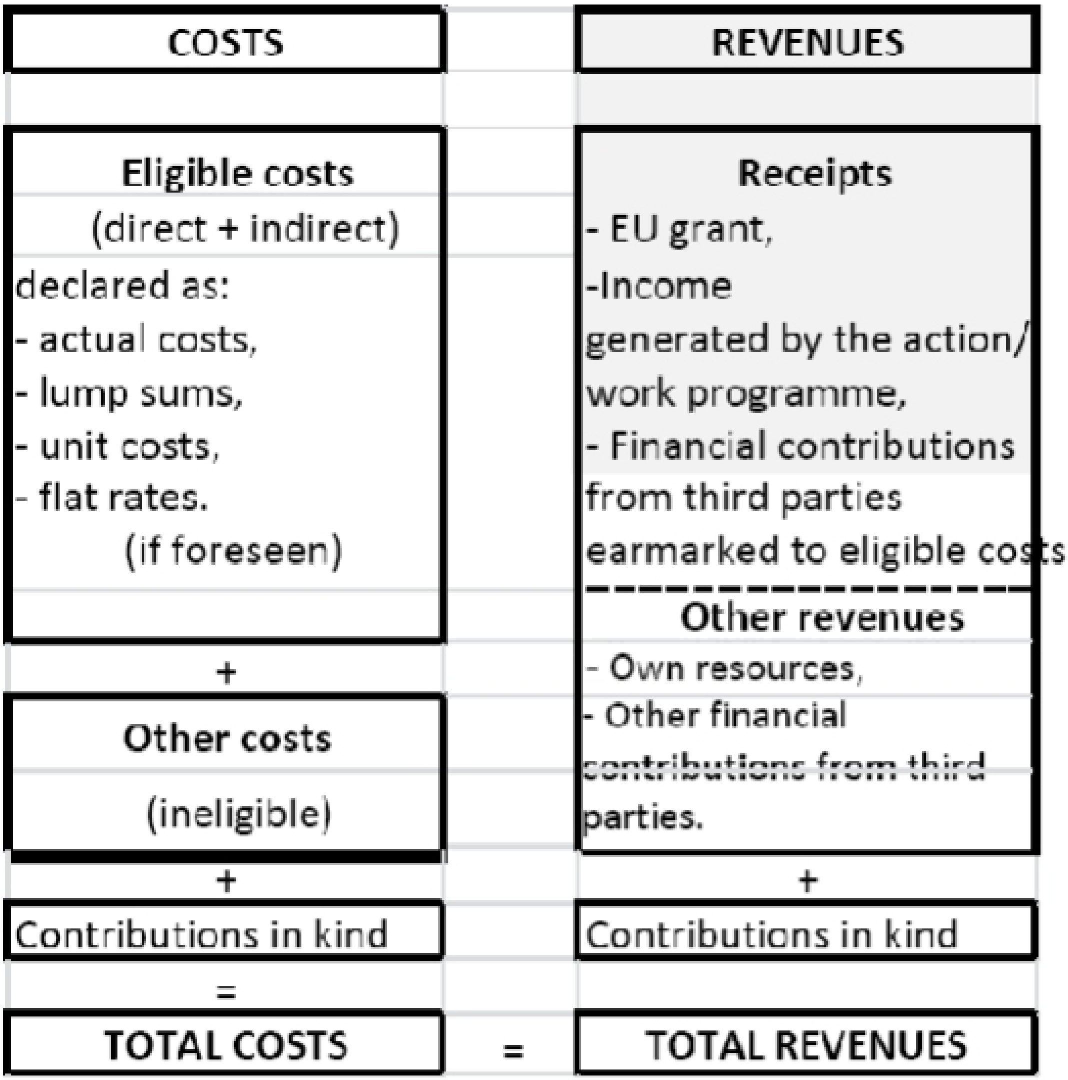
	Therefore, the following sources are not taken into account for the verification of the no-profit rule: - the Beneficiary's(ies') own resources, without prejudice to any provision in the Call for Proposal requiring a minimum financial contribution from the Beneficiary(ies) - the revenue generated by the Action after the date of the request for payment of the balance - revenue allocated to a particular project without assignment to certain eligible costs as defined by the contract in question or which the donors allow for the reassignment to similar projects or other activities after the implementation of the initial project in the case of surplus or non-consumption
	- any interest generated by pre-financing paid to the Beneficiary(ies) as well as any interest paid to the Beneficiary(ies) as a result of late payment of amounts owed by the Contracting Authority - exchange rate gains - in Operating Grants, the amounts allocated to the establishment of reserves (see Art. 17.5) - In-kind contributions.

	Financial contributions of other donors to be taken into account for the application of the no-profit rule At the time of submission of the request for final payment, the Coordinator must comprehensively declare and certify, in addition to the income generated by the Action, all financial contributions from third parties if and only if they meet all the following criteria: - They must be allocated by the donor to the same Action or part of the Action, for a period not exceeding the period of implementation of the Action (before or after), or for Operating Grants the recipient's fiscal year; - The rules of eligibility of costs should be clearly defined by the donor. Eligible costs under its contribution cannot contain ineligible costs under the EU grant.
	- In case of under-execution of the budget, unused amounts must be repaid to the donor and may not be deferred beyond the period of implementation initially defined or reassigned to other activities (with or without permission of the donor). These conditions are not usually met by donor contributions, and therefore they may be declared by the Coordinator for the amount necessary to balance receipts and the approved eligible costs of the Action. The certificates that may be requested in support of the request for payment of the balance and in case of controls or audits will be based on the agreements signed with the donors, and the criteria above, to check the nature of the amounts reported as receipts by the Coordinator.

	Beneficiary's(ies') own contributions In the absence of specific provisions imposing a minimum contribution to the recipient's own funds, the Beneficiary 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.

17.5. In case of an operating grant, amounts dedicated to the building up of reserves shall not be considered as a receipt.	Operating Grants are not subject to a special treatment for the purposes of the non-profit rule. Nevertheless, some difficulties of interpretation remain, especially when it comes to distinguishing the Beneficiary's own resources from income generated by the implementation of the work program, part of its normal operation and performance of its statutory duties. To reduce the risk of dependence vis-à-vis the EU funds - so that the abolition of the principle of gradual reduction may increase - it is advisable to adopt a restrictive approach to the concept of "revenue generated by the program of work" and to take into account only the revenues directly attributable to activities specifically listed in the work program (i.e. entrance fees at conferences organised by the Beneficiary under its awareness-raising mission). Conversely, contributions to the Beneficiary by its members or supporters, and the proceeds of its fundraising campaigns may be treated as the Beneficiary's own resources, and will thus fall outside the scope of the revenue to be used for the application of the principle of non-profit.

17.6. Where the final amount of the grant determined in accordance with the Contract would result in a profit, it shall be reduced by the percentage of the profit corresponding to the final Union contribution to the eligible costs 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 approved eligible costs. The amount to be deducted by the Contracting Authority contribution (established according to Art 17.1) is calculated by applying the actual % reimbursement of eligible costs to the surplus, as determined at the time of payment of the balance. Therefore, the percentage recovery of profit may be less than the percentage of reimbursement of eligible costs conventionally fixed. This is also the case when the provisional grant amount, after applying double ceiling, reaches the maximum contribution in absolute value established in the Special Conditions.
17.7. The provisions in Article 17.3 shall not apply to: a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary, if specified in Article 7 of the Special Conditions; b) actions which generate an income to ensure their continuity beyond the end of this Contract, if specified in Article 7 of the Special Conditions; c) other direct support paid to natural persons in most need, such as unemployed persons and refugees, if specified in Article 7 of the Special Conditions; d) study, research or training scholarships paid to natural persons; e) grants of EUR 60.000 or less.	The exemptions stated in letter a) b) and c) of this article are only applicable if clearly stated in Art.7 of the Special Conditions. When the no-profit rule does not apply, the Contracting Authority will not check whether there is a profit or not. It will just calculate the final amount of the grant according to Articles 17.1 and 17.2 of the General Conditions.



19.3.5. Article 18 - Recovery

19.3.5.1. Recovery

Text of the Article	Guidelines

18.1. If any amount is unduly paid to the Coordinator, or if recovery is justified under the terms of this Contract, the Coordinator undertakes to repay the Contracting Authority these amounts.	The Coordinator has the sole financial responsibility for the contract. The Coordinator is liable for any undue funds they receive, even if the ineligible costs were incurred by other Beneficiaries or Affiliated Entity(ies).
18.2. In particular, payments made do not preclude the possibility for the Contracting Authority to issue a recovery order following an expenditure verification report, an audit or further verification of the payment request.	Although the main aim of audit and verifications is to enforce and obtain assurance and understanding of the control systems in place, if it is found that certain costs are not in line with the eligibility criteria that have been set, the underlying costs may be deemed ineligible, including after the final payment. In such cases the Contracting Authority may reduce the final amount on the grant and may need to recover the funds unduly paid.
18.3. If a verification reveals that the methods used by the Beneficiary(ies) to determine unit costs, lump sums or flat-rates are not compliant with the conditions established in this Contract and, therefore an undue payment has been made, the Contracting Authority shall be entitled to recover proportionately up to the amount of the unit costs, lump sums or flat rate financing.	
18.4. The Coordinator undertakes to repay any amounts paid in excess of the final amount due to the Contracting Authority within 45 days of the issuing of the debit note, the latter being the letter by which the Contracting Authority requests the amount owed by the Coordinator.	If the amount of the pre-financing payments exceeds the final amount of the grant (as calculated on the basis of approved eligible costs according to Art.17) the Coordinator will have to reimburse the difference. In this case a recovery order will be issued by the Contracting Authority, or the amount can be offset against any other pending payment due to the Coordinator (Art.18.6).

19.3.5.2. Interest on late payments

Text of the Article	Guidelines

18.5. Should the Coordinator fail to make repayment within the deadline set by the Contracting Authority, the Contracting Authority may increase the amounts due by adding interest: a) at the rediscount rate applied by the central bank of the country of the Contracting Authority if payments are in the currency of that country; b) at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, where payments are in euros; on the first day of the month in which the time-limit expired, plus three and a half percentage points. The default interest shall be incurred over the time which elapses between the date of the payment deadline set by the Contracting Authority, and the date on which payment is actually made. Any partial payments shall first cover the interest thus established.	If the Coordinator fails to reimburse amounts due to the Contracting Authority within the deadline set following the issue of a debit note (or recovery order), the Contracting Authority may add late payment interest, similarly to the case described in Art. 15.6 of the General Conditions.

19.3.5.3. Offsetting

Text of the Article	Guidelines
18.6. Amounts to be repaid to the Contracting Authority may be offset against amounts of any kind due to the Coordinator, after informing it accordingly. This shall not affect the Parties' right to agree on payment in instalments.	The Contracting Authority may recover amounts due by offsetting them against any other payment due to the Coordinator (even for another/different contract, or even under a different budget line). The Contracting Authority shall not do this automatically, but will inform the Coordinator in advance. In case of difficulties, the Contracting Authority may agree on re-payment or offsetting through instalments.

19.3.5.4. Other provisions

Text of the Article	Guidelines
18.7. The repayment under Article 18.4 or the offsetting under Article 18.7 amount to the payment of the balance.	
18.8. Bank charges incurred by the repayment of amounts due to the Contracting Authority shall be borne entirely by the Coordinator.	Once the final amount of the grant has been established and funds have been unduly paid, the Coordinator has to bear the cost for returning these funds to the Contracting Authority, as they cannot be reclaimed.
18.9. The guarantee securing the prefinancing may be invoked in order to repay any amount owed by the Beneficiary(ies), and the guarantor shall not delay payment nor raise objections for any reason whatsoever.	Guarantees may be called in as a means to recover undue funds paid to the Coordinator, even if the ineligible costs were incurred by co-Beneficiaries or Affiliated Entity(ies).
18.10. Without prejudice to the prerogative of the Contracting Authority, if necessary, the European Union may, as donor, proceed itself to the recovery by any means.	

20. The implementation of supply contracts - A Users' Guide

[*The content of this chapter is under the responsibility of DEVCO.R3 . The last update was made in June 2015]*

20.1. Introduction

> This users' guide is designed exclusively to support staff of the European Commission when implementing procurement contracts in the context of External Actions. It is neither an official interpretation of the contract documents nor does it create any rights or obligations. It is tailor made for Commission staff and requires knowledge of and experience in internal procedures. It is neither intended nor able to provide guidance to Contractors or the general public.

The General Conditions govern the implementation of supply contracts. The standard tender documents and contracts contain several references and options for modifying and supplementing the General Conditions through the Special Conditions. The Special Conditions may thus include the necessary additions to the General Conditions. Through these additions and modifications, the Special Conditions should take into account the specific subject matter of the contract as well as the specific circumstances of the project to which the contract relates. This Guide does not deal with each and every article of the General Conditions for supply contracts but only with those articles which are considered essential or so complex as to require further explanation. Other provisions of the General Conditions speak for themselves.

20.2. Article 5 - Assignment

Contractors sometimes need to assign rights under the contract for the benefit of their creditors or insurers: for instance, when the Contractor insures himself for possible losses, the insurance contract will often require the Contractor to transfer to the insurer his right to obtain relief against the person liable, so that the insurer can in his turn recover the damages from that liable person.

Likewise, when granting credit, the Contractor's bank can demand from the Contractor that the payments which the Contractor receives under the contract are directly paid to the bank. Such assignments for the benefit of the Contractor's creditors or insurers do, of course, not imply that these bank or insurance companies will take over the further implementation of the contract.

Consequently, Article 5.2 of the General Conditions stipulates that for the situations under points (a) and (b) of that article, the prior written consent of the Contracting Authority is not required. Still, even for those cases, the Contractor will have the responsibility to notify the Contracting Authority of the assignment, as covered in Articles 27.1 and 27.2 of the General Conditions.

In other cases a prior approval of the Contracting Authority is required. In these situations the Contractor's rights and obligations under the contract can be transferred to a third party, the assignee, who then in his turn becomes the new Contractor for the contract or a part of it. An assignment could, for instance, become necessary following an organisational or shareholding change in the group of which the Contractor forms part (eg. acquisition, merge, etc.) when such change entails a modification in the juridical status of the Contractor.

The assignment through which the assignee takes over the further implementation of the contract requires the prior written consent of the Contracting Authority formalised through an addendum of the contract. As the initial Contractor, the assignor, obtained the contract through a public procurement procedure, the Contracting Authority, when giving its consent, has to assure that the assignment is not a way to circumvent the award procedure and does not call into question the basis on which the award decision was made. For this reason, the assignee must, for instance, also satisfy the eligibility and exclusion criteria applicable for the award of the contract in the original tender dossier.

For the same reason, the assignment must not alter the unit price or the contract conditions of the initial contract. As a result, the addendum formalising the transfer of the contract will often be limited to a mere modification of the Contractor's identity and bank account details.

Although the addendum is to be signed by the Contracting Authority, the assignor, and the assignee, often the assignor and assignee lay down the arrangements between them in a separate deed to which the Contracting Authority is not and should not be a party.

Before giving its prior written consent to the proposed assignment, where necessary, the Contracting Authority should receive the necessary financial guarantees from the assignee. As the assignee takes over all contractual obligations without limitation, the assignee will bear full liability for any contractual breach, regardless whether the cause took place before or after the assignment. Article 5.3 of the General Conditions states that assignment does not relieve the Contractor of its obligations for the part of the contract already performed or the part not assigned.

By virtue of Articles 5.4 and 36.2.d of the General Conditions, the assignment of a contract by the Contractor without authorisation by the Contracting Authority is valid cause for termination of the contract.

Article 5.4 of the General Conditions also states that, in the case where the Contractor has assigned the contract without prior authorisation, the Contracting Authority can apply, as of right, the sanctions for breach of contract. Therefore, in addition to the extra costs for completion of the contract, the Contracting Authority shall be entitled to recover from the Contractor any loss it has suffered up to the value of the supply (general damages), unless otherwise provided for in the Special Conditions.

20.3. Article 6 - Sub-Contracting

Although certain supplies may be sub-contracted, the Contractor remains fully responsible for his obligations under the contract (Art. 6.5). The supply to be sub-contracted and the names of the sub-Contractors must be notified to the Contracting Authority. The Contracting Authority then notifies the Contractor of its decision authorizing or refusing to authorize the proposed sub-contract within 30 days. Where the Contracting Authority refuses authorization, the reason for the refusal should be stated (Art. 6.2). Sub-contracting without the approval of the Contracting Authority can result in termination of the contract (Art. 6.7 and 36.2.d).

Before approving a sub-contract, the Contracting Authority should examine the Contractor's evidence that the sub-Contractor he proposes satisfies the same eligibility criteria as those applicable for the award of the contract and is not in one of the exclusion situation mentioned in the tender dossier. For EDF financed contracts, where subcontracting is envisaged, preference shall be given by the Contractor to sub-Contractors of ACP States capable of implementing the tasks required on similar terms (Article 26.1.d, of Annex IV to the Cotonou Agreement). It is most likely the case that private sector operators of ACP States be awarded sub-contracts on the local market. However, when checking that the proposed sub-Contractor meets eligibility criteria, the Contracting Authority should bear in mind Art. 26 purpose of encouraging the widest participation of natural and legal persons from ACP States.

A tenderer may in his tender have stated the supply which he proposes to sub-contract and sometimes also the name of the proposed sub-Contractors. It should be made clear, before the contract is signed, whether the Contractor is to be bound by such proposed sub-contracts. This will be the case where the qualifications of the sub-Contractors, identified by a tenderer in his tender, have been taken into account during the evaluation of the bids and are part of the technical reasons for awarding the contract to the tenderer in question. If this is the case, it should be explicitly mentioned in the notification of award of the contract.

In relation to the execution of a sub-contract, it is sometimes necessary for the Project Manager to deal directly with the sub-Contractor on technical matters. In such a case, he may only do so with the agreement of the Contractor, and it is essential that the Contractor is kept informed at all stages so that the Contractor is immediately aware of discussions or correspondence that have taken place between the project manager and the sub-Contractor and can comment or take such action as he considers appropriate.

If, at the end of the warranty period, there is still some unexpired guarantee or other obligation due from a sub-Contractor to the Contractor, the latter must transfer this right including any guarantee to the Contracting Authority if so requested (Art. 6.6). The Contracting Authority may also make such a request at any time after the end of the warranty period. The Contractor should always include a provision in his contract with the sub-Contractor so that he can fulfil his contractual obligations in this respect.

Sub-contracting should be distinguished from cases where the Contracting Authority enters into a separate direct contract with another Contractor for supplies which are not part of the contract, but is part of the same project. Where a project is divided into a number of separate contracts, the Project Manager will need to coordinate them, on behalf of the Contracting Authority. Whilst a Contractor is fully responsible for his sub-Contractors, he is not responsible for other Contractors working on the project but he may be responsible for liaising with them if he is required to do so in his contract.

20.4. Article 9a -Code of Conduct

The Contractor must act at all times with impartiality and as a faithful advisor to the Contracting Authority in accordance with the code of conduct of its profession (Article 9a.1). It must abstain from partaking in any activity or receiving any benefit which are in conflict with its obligations towards the Contracting Authority (Article 9a.5).

The requirement that the Contractor be independent is further developed in Article 9a.4 which also concerns its sub-Contractors, agents, and personnel.

Article 36.2.n provides that the Contracting Authority may terminate the contract if the code of conduct has not been respected.

20.5. Article 9b -Conflicts of Interest

The Contractor must take all necessary measures to prevent or put an end to any situation of conflict of interest which may arise, for example financial interests, national or political affiliations, or familial or emotional links. This article does not only cover the Contractor, but also his sub-Contractors, agents, and personnel.

It is important to note that in principle, the Contractor is not authorised to carry out other tasks for the same project, except with written permission from the Contracting Authority. This rule is also valid for the employees of the Contractor, for members of its staff who have worked on other stages of the project, and for any other entity which is associated or linked to the contract.

Where a conflict of interest arises during the implementation of the contract, the Contractor must inform the Contracting Authority and take all necessary measures to put an end to the conflict.

Article 36.2.n permits the Contracting Authority to terminate the contract if the provisions concerning conflicts of interest have not been respected.

20.6. Article 10 -Origin

Origin is the "economic" nationality of goods in international trade. The rule of origin refers to the origin of goods and equipment and it is defined in the contract notice/instructions to tenderers of the call. Therefore, it is required to refer to those documents in order to assess goods compliance with the rule of origin.

In exceptional and well justified cases, the Contracting Authority may have sought derogation to the rule of origin. This could be the situation of particularly closed markets, or remote areas where spare parts are not easily available; another typical example is IT supplies which need to be compatible with existing installation not compliant with the rule of origin. In those cases the derogation must have been granted before the procurement procedure was launched.

Goods whose production involves more than one country shall be deemed to originate in the country where they underwent their last substantial transformation (see PRAG 2.3.1).

Obviously when goods are wholly obtained or produced in one country, the origin shall be established in that country. In practice this will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.

The Contractor must state the origin of goods in the offer. The origin must be proved by a “certificate of origin” provided by the Contractor to the Contracting Authority on provisional acceptance and before executing the final payment. The provision of the certificate of origin cannot be considered an *outstanding item* (see section 11.5) which the Contractor may address during the warranty period. The provisional acceptance certificate cannot be issued without previous positive assessment of the certificate of origin. This assessment aims at verifying that the certificate of origin is made out by the competent authorities of the country of origin of the supplies or supplier (normally the Chambers of Commerce). The Contracting Authority may request, in case of doubt regarding the certificates of origin provided by the Contractor or the information it contains, additional documentation on the origin of goods.

The Contracting Authority may require the Contractor to provide more information before the provision of the certificate (eg. when the supply is a component of a works contract) (Art. 10.2 General Conditions).

Failure to provide a certificate of origin, or providing a certificate with a non-compliant origin as well as a certificate not reflecting the actual origin of the supplies may lead, in addition to other possible sanctions (see section 15), to the ineligibility of the relevant costs of the supply covered by the certificate, or to termination of the contract (Art. 10.3 General Conditions).

20.7. Article 13 -Programme of implementation of tasks

If so required in article 13.2 of the Special Conditions, the Contractor shall submit to the Project Manager a programme of implementation of tasks. The programme should contain, at least, the order in which the Contractor proposes to carry out the tasks, the time limits within which submission and approval of drawings are required, a general description of the method which the Contractor proposes to carry out the contract, and such further details and information as the Project Manager may reasonably require (13.1 General Conditions).

The programme must be sent by the Contractor to the Project Manager within the deadline set in the Special Conditions and will be subject to the approval of the Project Manager within the time limit provided therein. The programme has contractual significance for the actions taken by the Contractor, the Project Manager and the Contracting Authority. The programme will enable the Project Manager to take timely action in monitoring the progress of the implementation and to enable the Contracting Authority to make arrangements for the provision of drawings, documents and items. It also permits the Contractor to effect timely orders and the allocation of resources (materials, equipment, etc.).

The Special Conditions should give any additional information or specification about the manner in which the programme should be presented. The Special Conditions may specify the format for the programme.

The Project Manager, on observing that the implementation of the tasks has departed materially from the approved programme, may instruct the Contractor to revise the programme within a given time and in the manner that the Project Manager considers appropriate (Art. 13.4 General Conditions). The purpose of having a revised programme is to show how the Contractor intends to make up for any delay so as to complete the remaining tasks within the time available. Proper management of the contract is only possible with a realistic programme which reflects the actual progress already made.

Where the Contractor is proceeding with the tasks in accordance with or in advance of the programme, it should not be necessary for the Project Manager to order such a revision. On the other hand, the Contractor is not permitted to modify the programme of implementation of tasks without the approval of the Project Manager.

The Contractor is not entitled to any additional payment for revising the programme.

20.8. Article 16 -Tax and customs arrangements

Clearance through customs, import and export licenses, port regulations, storage and transport regulations are normally the responsibility of the Contractor and he should take all necessary steps in sufficient time to meet the requirements of the contract.

The Contracting Authority should facilitate the Contractor in connection with clearances through customs and tax exemptions where applicable although it is the Contractor himself ultimately responsible for fulfilling tax and customs obligations.

Delivery conditions are established in the tender dossier choosing between two options. The first one is DDP (Delivery Duty Paid), according to Incoterms established by the International Chamber of

Commerce in 2010 (Art. 16 General Conditions). DDP sets the widest obligation for the seller in respect of transportation and loss risks and damage associated with the goods: "*the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities*." This means that the seller delivers the goods to the buyer, cleared for import and not unloaded from any arriving means of transport at the named place of destination.

The alternative Incoterms, which need to be specified in article 16 of Special Conditions (when so indicated in the instructions to tenderers), would be DAP (Delivered At Place): "*the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place*." This means that the buyer bears all risks and costs of import clearance at the port or at the border of the agreed place of destination, whereas customs clearance for export is on the seller, differently from DDP. DAP proves to be a favorable option especially when the Financing Agreement foresees an exemption of import duties.

Unloading is not included in the Incoterms delivery conditions; however it is already foreseen in article 15.1 of the General Conditions. Nevertheless when it is required, it should also be added in the instructions to tenderers and in the Special Conditions of the contract. Further requirements for liability and insurance may also be introduced in Special Conditions article 12.

In addition to choosing delivery conditions in Art. 16 of Special Conditions, any other element needing to be included or excluded from the tender price can be specified in Special Conditions article 15, otherwise art. 15.1 of the General Conditions fully applies.

For specific obligations on ACP States related to taxes and customs arrangements (Article 31 Annex IV to Cotonou agreement) please refer to DEVCO Companion section 10.4.5.1.

20.9. Article 22 -Modification of the contract

No request for modification can give rise to a change in the conditions of awarding the contract in question.

Three situations are to be distinguished.

20.9.1. Changes which do not need a contractual modification

Increases or decreases as regards the quantity of any incidental siting or installation which are a result of too low or too high estimates in the budget breakdown do not constitute a modification of the contract and do not therefore require an administrative order or a contractual addendum (Art. 22.4.c). The same applies to any changes of address or bank account by the Contractor (Art. 22.9).

20.9.2. Administrative order

The Project Manager or the Contracting Authority can, on his own initiative or at the request of the Contractor, order any modification that he considers useful for the proper implementation of the contract, so long as it does not have the effect of invalidating the contract. Article 22 of the general conditions outlines the modifications that he may make, and sets out the terms and criteria of their execution. These modifications can be ordered by making administrative orders.

There may be urgent situations where it is necessary to issue oral instructions to the Contractor. In such cases, the oral instructions should be promptly confirmed by issuing an administrative order. Alternatively, the Contractor may confirm in writing an oral order which has been given by the Project Manager or the Contracting Authority. This is deemed to be an administrative order unless immediately contradicted by the Project Manager or the Contracting Authority in writing (Art. 22.4.b).

Except in the case of oral instructions, an administrative order to modify a contract is made in accordance with the following procedure:

a) The Project Manager evaluates the nature and form of the modification.

b) Although the Project Manager is not obliged to request authorisation from the Contracting Authority before inviting the Contractor to submit proposals, he can consult the Contracting Authority in order to be sure that it does not disapprove. This precaution is particularly important where the modification results in budgetary adjustments which must be considered by the donor.

c) The Project Manager or the Contracting Authority notifies the Contractor of his intention to request a modification and outlines its nature and the form. He also asks the Contractor to submit all necessary proposals for changing the budget of the contract and the programme of implementation for the tasks.

d) After receiving the Contractor's proposal, the Project Manager can issue an administrative order to make the modification, which should indicate any additional information given by the Contractor.

All administrative orders issued by the Project Manager must receive the agreement of the Contractor.

All modifications are evaluated in accordance with the rules defined in Article 22.7. Whenever possible, appropriate rates and prices in the budget should be used at least as a basis for comparison. An amount considered as “reasonable” should only be fixed when there are no appropriate applicable rates or prices. This amount should cover the estimated actual cost to the Contractor, as well as overheads and profit.

Among the modifications which can be requested by the Project Manager, there are for example changes in the quantity up to 100%, provided the total value of supplies does not vary more than +/- 25% of the tender price.

Sometimes a modification is made necessary by a failure of the Contractor or by a deficiency in implementation which is imputable to him. In this case, all the additional costs created by this modification are attributable to the Contractor (Article 22.7).

The Project Manager cannot issue an administrative order resulting in an increase or reduction in the initial amount of the contract. It should be noted that all modifications which result in an increase or reduction in the total value of the contract or substantial modifications require an addendum (see below).

An administrative order must be validated within the execution period of the contract, provided any modification is requested during the implementation period. It must be noted that the execution period of the contract may continue up to 18 months after the end of the period of implementation.

20.9.3. Addendum

In addition to the above changes, it can happen that the parties to the contract (the Contracting Authority and the Contractor) mutually agree upon more serious modifications to the contract. Then, such contract modification must be formalised through an addendum (Art. 22.1).

In this regard, it is important to bear in mind that:

- It is necessary to proceed through a contract addendum when the envisaged modification would result in an increase or reduction of the total value of the supplies in excess of 25% of the initial contract price.

- An addendum is also necessary when additional deliveries by the original supplier become necessary. In this case, following negotiated procedure, an addendum to the contract can be concluded under the following conditions: (i) when the additional deliveries are intended as partial replacement of normal supplies or installations; or (ii) where the additional deliveries are the extension of existing supplies and installations; and (iii) where a change of supplier would oblige the Contracting Authority to acquire equipment having different characteristics which would result in either incompatibility or disproportionate technical difficulties in operational maintenance.

An addendum must be validated within the execution period of the contract, provided any modification is requested during the implementation period. It must be noted that the execution period of the contract may continue up to 18 months after the end of the period of implementation.

20.10. Article 23 -Suspension

Various reasons can justify the suspension - in principle temporary - of a contract. Sometimes, the law governing the Contract provides for special causes of suspension which are in addition to the specific causes in the Contract. Article 23 of the General Conditions of the Contract foresees two cases of contract suspension.

20.10.1. Suspension by administrative order of the Contracting Authority

Traditional event of suspension, concerns all the contract or part of it for such time or times and in such manner as the Contracting Authority may consider necessary.

20.10.2. Suspension for presumed substantial errors, irregularities or fraud

Suspension may be notified by the Project Manager or the Contracting Authority. It needs to be kept in mind that in the event that substantial error, irregularity or fraud are not confirmed and/or attributable to the Contractor this case of suspension allows the Contractor to be compensated for the expenses incurred due to any precautionary measures related to the suspension.

The contractual and financial consequences of the suspension are set out in Articles 23.4 to 23.6.

20.11. Testing, acceptance and maintenance

20.11.1. Introduction

The Contractor is required to provide the supplies which conform to the specifications, samples, etc. laid down in the contract (Art. 24.1).

The various stages in the checking procedure result in preliminary technical acceptance for certain materials, if required in the Special Conditions (Art. 24.2), provisional acceptance (Art. 31) and final acceptance of the supplies (Art. 34).

The provisional and final acceptance are the two stages in which the supplies are taken over effectively. The provisional acceptance takes place when the supplies have been delivered; the final acceptance after the warranty period when any defects have been properly made good. The contract may permit the provisional acceptance of the supplies in parts (partial provisional acceptance).

The warranty period stated in the contract commences on provisional acceptance. For defective items which have to be replaced or repaired, the warranty period restarts at the time of replacement or repair being made to the satisfaction of the Project Manager.

The Contractor is responsible for rectifying all defects which are observed in the supplies during the warranty period, provided that the defects are due to his default. He will not, however, be liable for defects which can reasonably be attributed to normal wear and tear or to faulty design or acts of the Contracting Authority or of the Project Manager.

The Contracting Authority and the Head of Delegation should be kept duly informed on the acceptance process.

20.11.2. Preliminary technical acceptance: inspection and testing of materials and workmanship

If preliminary technical acceptance is requested it needs to be specified in Article 24.2 of the Special Conditions.

When the Contractor considers that certain items are ready for preliminary technical acceptance, he takes the initiative by sending a request to the Project Manager (Art. 24.2 General Conditions). This is particularly important for inspections and tests not earned out on site but at the place of manufacture. If the Project Manager finds them satisfactory, he must issue a certificate stating that the items meet the requirements for preliminary technical acceptance laid down in the contract.

Before delivering such a certificate the Project Manager will proceed to inspection and testing as specified in Article 25.2 of the Special Conditions. Inspection is essentially visual in nature. It includes examining and measuring components and materials to check their conformity with the drawings, models, samples, etc., as well as checking the progress of manufacture against the program of implementation of tasks. Testing is the carrying out of technical tests on materials, components and manufactured goods, as described in the contract, to check that they are of the specified quality.

Inspection and testing may take place at the place of manufacture, the site or other places as may be specified in the contract (Art. 25.2 of the Special Conditions). If no place is specified, the place should be agreed between the Contractor and the Project Manager.

In preparing his program of implementation of tasks, the Contractor should allow for inspection and testing by the Project Manager and for the acceptance procedures and the Contractor's tender price should include costs for all tests; all Contractor's responsibilities relating to testing and inspection are specified in art. 25.3 General Conditions.

If Project Manager and Contractor disagree on the test results and where either party can require the test to be repeated or can request that the test is carried out by an independent expert. In that case, the party who is proved wrong pays for the repeat test. The result of the retesting is final (Art. 25.6).

Components and materials which are not of the specified quality must be rejected. Article 30 describes the procedure to be followed in that case including the possibility for the Contracting Authority to employ another Contractor to make good any rejected part of the supply (Art. 30.3) although it is preferable that it is the Contractor who rectifies the defects, since employment of another Contractor can confuse liabilities especially if the replacement order is not properly done.

It should be pointed out that the signing of a preliminary technical acceptance certificate is not final and depends on the Project Manager. It does not prevent the Project Manager from rejecting components or materials should any defect in them become apparent at a later date or when the supplies are submitted for provisional acceptance (Art. 24.3).

On the other hand, when tests have shown no failure and only at a later stage is it realized that the supplies fail to meet non-essential technical requirements of the contract, it may be appropriate for the Project Manager to investigate with the parties to the contract whether an acceptable solution can be found on the basis of adjustment of payment. This is particularly the case where replacement would lead to long delays, yet where the supplies delivered still meet the essential technical requirements. Although it is not provided for in the contract, this may be in the best interests of all concerned. Any agreement reached should take due account of the savings to the Contractor in not having to replace the supplies and in not having to pay liquidated damages. On the other hand, the Contracting Authority could gain in smooth and timely achievement of the tasks, especially in cases where rejecting materials already delivered and installed entails serious delays or disruption in the contract implementation.

In carrying out his duties, in particular during inspection and testing, the Project Manager often gains access to much information of a commercial nature regarding methods of manufacture and how an undertaking operates. He is required to respect the confidentiality of this information and describe it to others only on a "need to know" basis (Art. 25.7).

20.11.3. Partial provisional acceptance

Partial provisional acceptance involves the acceptance on a provisional basis of parts of supplies which have been delivered separately (Art. 31.5).

This may be with or without the contract specifying different lots (Art. 31.4).

20.11.4. Provisional acceptance

The Contractor is required to initiate the process of provisional acceptance of the supplies. The Project Manager, on his part, is obliged within 30 days after the receipt of the Contractor's application, either to issue the certificate of provisional acceptance to the Contractor, with a copy to the Contracting Authority, or to reject the application (Art. 31.2). These firm time limits for implementing the procedures are designed to reduce to the minimum possible the time needed for provisional acceptance. If the Project Manager fails either to issue the certificate of provisional acceptance or to reject the Contractor's application within the period of 30 days, he is deemed to have issued the certificate on the last day of that period (Art. 31.4). The provisional acceptance certificate cannot be issued without previous positive assessment of the certificate of origin (see section 6).

Upon provisional acceptance of the supplies, the Contractor is required to dismantle and remove from the place of acceptance all his remaining equipment, temporary structures and materials he no longer requires and any litter or obstructions and restore the place of acceptance to the condition specified in the contract (Art. 31.6). The obligation of the Contractor to leave the place of acceptance in proper condition is of utmost importance as it carries both cost and environmental consequences. Particular attention should be paid not only to the place of acceptance and its vicinity but also to any quarries, borrow pits, buildings, water sources etc., which were put at the disposal of the Contractor by the Contracting Authority. The Project Manager should ensure that this obligation is enforced.

After provisional acceptance and without prejudice to the warranty period referred to below, the Contractor shall no longer be responsible for risks which may affect the supplies and which result from causes not attributable to him.

20.11.5. Warranty period and obligations

On the date of provisional acceptance a warranty period commences, which is 365 days if not otherwise specified in the contract (Art. 32.7 of Special Conditions). Separate parts of the supplies may be assigned different defects liability periods, if need be (Art. 32.3).

The warranty period for items which have been replaced or repaired commences only after the observed defects have been remedied by the Contractor and certified by the Project Manager.

The main purpose of the warranty period is to demonstrate, under operational conditions that the supplies have been provided in accordance with the requirements of the contract. During this period the Contractor must not only make ready such outstanding items of supplies as may be listed in the certificate of provisional acceptance. He should also remedy any defects which are revealed during the warranty period (Art. 32.2). It is reminded that the certificate of origin cannot be treated as outstanding item (see section 6).

The Contract does not generally require the Contractor to perform further warranty obligations, unless provision has been specifically made for this in the contract documents (with corresponding provisions in the technical specifications) (Art. 32.6 of Special Conditions). This can be the case of the commercial or manufacturer warranty, which is the warranty the manufacturer provides for a defined period that the supply will be free from structural defects due to substandard material or workmanship, under conditions of normal commercial use and service.

The Contracting Authority or the Project Manager should notify the Contractor if any defect appears or damage occurs for which the Contractor is responsible during the warranty period. If the Contractor fails to remedy a defect or damage within the time limit stipulated in the notification, the Contracting Authority itself may carry out the repairs or employ someone else to do so, at the Contractor's risk and expense. In this case, the costs to the Contracting Authority for carrying out the repairs are deducted from monies due to or from guarantees held against the Contractor or from both. Alternatively, the Contracting Authority may terminate the contract (Art. 32.4). However, it is always preferable to give the Contractor every opportunity to make good defects in order to avoid disputes which may arise if the repair supply is not satisfactory.

The issue of the notification of defect or damage to the Contractor, referred to in Article 32.4, would normally fall within the duties of the Project Manager.

20.11.6. Final acceptance

The Project Manager should issue a final acceptance certificate to the Contractor within 30 days upon the expiration of the latest contractual warranty period or as soon thereafter as any supply have been provided and defects or damage have been rectified if that replacement or rectification did not take place before the end of the latest warranty period (Art. 34.1). A copy should be sent to the Contracting Authority, who should keep the Head of Delegation informed.

Notwithstanding its wording, the final acceptance certificate does not release the Contractor from all his obligations under the contract and the Contractor remains responsible as from the date of provisional acceptance for his obligations, as laid down in the law of the state of the Contracting Authority. For latent defects or faults of the supplies which were not discoverable at the end of the warranty period, the Contractor remains liable for the period specified in the law of the state of the Contracting Authority which also specifies the nature and extent of this liability.

A number of consequences follows from the issuance of the final acceptance certificate. For example, the Contractor is required to return to the Contracting Authority any drawings, specifications or other relevant contractual documents (Art. 7.1). The performance guarantee is also released within 45 days after the signed final acceptance certificate has been issued (Art. 11.7). There may still, of course, be some matters in dispute at this time, therefore the performance guarantee is released for its total amount except for amounts which are the subject of amicable settlement, arbitration or litigation.

20.12. Article 26 -Revision of Prices

The Contractor is bound by the rates and prices specified in the contract, and he assumes the risk of cost increases that may occur during the period of implementation of the tasks. Nevertheless, for contracts extending over several years, when the price of goods is subject to heavy inflation it is possible to make recourse to indexation.

Revision of prices is only authorised if provided for in the special conditions (Article 26.9). It may occur that the tender documents or the contract documents make this revision automatic. The procedure for this revision must specify the items to be subject to the revision. This is particularly the case for contracts of duration of greater than one year, but only for the period following the first year. There is a revision of prices when there is a rise in prices in the country of the currency in which payments are made.

The detailed rules as regards the revision of prices must be mentioned in the special conditions. The formula for the price revision makes reference to changes in the indices of consumer prices. A circular from DG BUDG which is annexed to this DEVCO Companion (J2), indicates the formula to be used in this case.

"Price revision" means any change in the contract price that is made necessary by factors which are external, non-technical, and beyond the control of the Contracting Authority and the Contractor, and which takes account of changes in the prices of significant elements of the costs incurred by the Contractor.

The price revision may result in either an increase or a decrease of the contract price, depending on the variation in the price of the basic elements.

The price revision requires a reference date for when the prices were determined. This date must be, in case of a call for tenders the deadline for submission of tenders or the expiry date of tenders or, in the case of contracts signed pursuant to a negotiated procedure, the month before the day on which the Contractor signed the contract.

20.13. Payments

20.13.1. General

The Contractor is entitled to pre-financing and final payments. These payments shall be made in euro or in national currency as specified in the Special Conditions (Art. 26.1). Unless otherwise specified in the Special Conditions (Art. 11.1), a performance guarantee is mandatory. If so, no payments can be made before the Contractor has provided the performance guarantee. The Contractor has to provide a pre-financing guarantee, except if the amount of the contract is below EUR 60 000 or if the pre-financing payment requested is below or equal to EUR 300 000 (despite being in this situation the Contractor would however be requested a financial guarantee if he has not submitted the documentary proof for verifying selection criteria or if after a risk evaluation the Contracting Authority decides to request a financial guarantee, Art. 26.5.a Special Conditions).

Where the Contractor is a public body, the obligation for a pre-financing guarantee may be waived depending on a risk assessment made.

The final payment is made to the Contractor after receipt by the Contracting Authority of an invoice and of the application for the certificate of provisional acceptance (and presentation of the certificate of origin when required, Art. 10.3).

In indirect management with Beneficiary Countries, for contracts with ex ante Commission control, payments are normally made, after clearance by the Contracting Authority and endorsement by the Delegation, directly to the Contractor by the Commission.

According to Article 26.3 of the General Conditions supplemented by the Special Conditions for indirect management with Beneficiary Countries, payment delays vary according to criteria. Please refer to DEVCO Companion section 10.1.6.1. - Time limits for expenditure operations.

Payments due by the Contracting Authority shall be made to the bank account mentioned on the financial identification form completed by the Contractor. The same form, annexed to the invoice, must be used to report changes of bank account.

20.13.2. Pre-financing and final payment

Pre-financing payment, equal to maximum 40% of the total contract amount, can be made only after the contract has been concluded and the performance guarantee (Art. 11) and the pre-financing guarantee have been provided (Art. 26.5), unless otherwise provided for in the Special Conditions.

Pre-financing payment shall be made in accordance with Art. 26.3 of the General and Special Conditions and upon receipt of an admissible invoice by the Contracting Authority. The invoice shall not be admissible if one or more essential requirements are not met.

The final payment (equal to maximum 60% of the total contract value, as payment of the balance), must be paid within the time period laid down in Art. 26.3 of the General and Special Conditions after receipt by the Contracting Authority of an invoice and of the application for the certificate of provisional acceptance as per Art. 31.2. The balance should only be paid after the provisional acceptance certificate has been issued by the Project Manager. When the balance is paid the pre-financing and liquidated damages, if any, should be deducted.

20.13.3. Delayed payments

All payments to be made by the Contracting Authority to the Contractor must be executed in accordance with Art. 26.3. Once the time limit for payment has expired, the Contractor shall, within two months of receipt of the late payment, receive default interest. Under indirect management, however, the Contractor is entitled to late-payment interest upon demand to be submitted within two months of receiving late payment (Art. 28.2 Special Conditions).

Default interest shall be calculated:

- at the rediscount rate applied by the central bank of the Partner country if payments are in the currency of that country ;

- at the rate applied by the European Central Bank to its main refinancing transactions in euro, as published in the Official Journal of the European Union, C series, if payments are in euro,

on the first day of the month in which the time-limit expired, plus eight percentage points.

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

The late-payment interest shall apply to the time which elapses between the date of the payment deadline, and the date on which the Contracting Authority's account is debited.

Note that pursuant to Article 28.3 of the General Conditions, the Contractor has the right, after giving notice to the Contracting Authority, to suspend performing the contract or to terminate it when payment is late by more than 90 days. Performance will resume once the Contractor has received payments or has received reasonable evidence that the payment has been proceeded with.

20.13.4. Payments to third parties

Article 27.1 is linked with Article 5 on assignment. Orders for payments to third parties may only be carried out after an assignment of the contract or part of it to a third party has been notified to the

Contracting Authority by the Contractor, and the Contracting Authority has given its written consent (Article 5.2).

20.14. Financial Guarantees

For the financial execution of the supply contract two types of financial guarantee could be required:

a) The performance guarantee (Art. 11);

b) The pre-financing guarantee (Art. 26.5.a).

The financial guarantee templates in Annex V to the Supply contract (annexes c4h and c4i to PRAG) should be used.

For further information about types and conditions for release please refer to DEVCO Companion section 10.4.7.

20.14.1. Performance guarantee

For contracts worth more than EUR 150 000 the Contractor must provide the Contracting Authority with a performance guarantee, unless the Contracting Authority has decided not to demand such a guarantee on the basis of objective criteria such as the nature and value of the contract. This guarantee (whose amount is set by the Contracting Authority between 5 % and 10 % of the amount of the contract and any riders) must be placed at the latest on return of the countersigned contract. It is intended to cover the Contractor's liability for the full and proper performance of the contract; therefore no payment can be made to the Contractor before the performance guarantee has been submitted.

The performance guarantee is normally released within 45 days starting from the date of issue of the final acceptance certificate by the Project Manager.

The performance guarantee is autonomous from the underlying supply contract; therefore calling on the guarantee is not conditioned to any objections related to the underlying contract, save a few exceptions (namely a fraudulent claim by the Contracting Authority), which the Contractor has to back with actual evidence.

20.14.2. Pre-financing guarantee

A pre-financing guarantee must be requested and received before any pre-financing payment above EUR 300 000; it must cover the amount of the pre-financing, and be denominated in the currency of payment. However, for a pre-financing amount which is less than EUR 300 000, such a guarantee is not required unless:

- The documents proving that the Contractor fulfils the selection criteria were not provided by the Contractor (or demanded by the Contracting Authority). This is the case for contracts awarded pursuant to a competitive negotiated procedure;

- A risk analysis by the Contracting Authority requires it to seek such a guarantee. This is the case for a Contractor who has been registered in the Early Warning System over the previous 3 years, or for a Contractor which has not fulfilled the selection criteria itself, but has had recourse to the financial, technical, or professional capacity of another entity.

For supply contracts of less than EUR 60 000, it is not allowed to demand a guarantee to cover the pre-financing.

The pre-financing guarantee is released within 45 days of issue of the provisional acceptance certificate for the supplies.

20.15. Article 35 -Breach of Contract

A breach of contract is committed where one of the parties to the contract fails to discharge any of its obligations under the contract. Some breaches are of only minor importance, whereas others, such as the non-implementation of the contract by the Contractor or the failure by the Contracting Authority to pay amounts due to the Contractor, are major breaches and have serious consequences. Only serious breaches entitle one of the parties to terminate the contract, and these are enumerated in Article 36 (breaches by the Contractor) and Article 37 (breaches by the Contracting Authority). For other breaches the injured party may claim damages, suspend payments, or suspend the implementation of the contract.

The injured party is then entitled to recover damages from the other party either by negotiation and agreement or, if necessary, by a court action.

The damages to which an injured party is entitled may be either general damages or liquidated damages, both of which are defined in the Glossary of Terms, Annex A1 to the Practical Guide.

Liquidated damages are damages which have been agreed beforehand by the parties, and recorded in the contract, as being a genuine estimate of the loss suffered by the injured party for a particular breach of contract.

General damages are not agreed beforehand. An injured party seeking to recover general damages must prove the loss it has suffered, whether it attempts to do so by direct agreement with the party in breach or by means of arbitration or litigation.

Any amount of damages, whether liquidated or general, to which the Contracting Authority is entitled, can be deducted from any sums which it is due to pay to the Contractor, or alternatively from an appropriate guarantee, usually the performance guarantee (see section 14.1).

20.16. Article 36 -Termination by the Contracting Authority

The General Conditions enumerate several grounds which entitle the Contracting Authority to terminate the contract, and also stipulate its rights upon termination.

The period of 7 day-notice mentioned in Article 36.2 is not aimed at giving the Contractor a final chance to remedy his failures.

Termination is a serious step and should only be taken after exhaustive consultations between the Contracting Authority and the Project Manager. Before resorting to termination, the issue of warnings to the Contractor or instructions to remedy should be considered. The grounds for termination mentioned in Article 36.2 all relate to defaults or lack of ability on the side of the Contractor and speak for themselves. Nevertheless, attention should be drawn to the fact that the Contracting Authority may terminate the contract for reason of any organisational modification in the legal personality, nature, or control of the Contractor, for which it did not obtain the prior consent of the Contracting Authority through an addendum to the contract (Art. 36.2.f).

Of course, any modification which is acceptable to the Contracting Authority should be formally agreed. This is most likely to occur in the case of a change to the legal relationship between the parties within a consortium or a joint venture. However, there may be changes which affect the rights of the Contracting Authority in a way which it cannot accept. In that case it has the possibility to terminate the contract.

The Contracting Authority may also, at any time and with immediate effect, terminate the contract for other reasons than those provided in Article 36.2,whether they are provided elsewhere in the General Conditions or not.

Where termination by the Contracting Authority is not due to a fault of the Contractor, force majeure, or other circumstances beyond the control of the Contracting Authority, the Contractor may be entitled to claim an indemnity for loss suffered, in addition to sums owed to him for supplies already delivered. Such loss includes that of profit on the remaining part of the supplies to be delivered. Termination of the contract does not result in a cessation of all rights and obligations and activities as between the parties. Indeed, in such a case, the Project Manager has to draw up a detailed report of the supplies which have been delivered by the Contractor, of the incidental siting or installation performed and has to take an inventory of the materials supplied and unused.

The net amount due to the Contractor can be ascertained and paid only when all supplies have been completed and the full value of contracts with third parties and other costs have been deducted from monies due to the Contractor (Art. 36.7).

The Contracting Authority is also entitled to recover from the Contractor, in addition to the extra costs necessary for completion of the contract, any loss it has suffered because of inadequacies in work already completed and paid for.

20.17. Article 37 -Termination by the Contractor

Unlike the Contracting Authority, the Contractor can terminate the contract only on few specific grounds listed in Article 37: the Contracting Authority has not paid him sums due for longer than 90 days after the expiration of the contract payment deadline, consistently fails to meet its obligations under the contract, or has suspended the contract for more than 180 days for reasons which are not specified in the contract and which are not due to any failure by the Contractor. The termination takes effect automatically 14 days after the Contractor has given notice of termination to the Contracting Authority. In the notice, the Contractor should specify the grounds for the termination.

The Contractor is entitled to be paid by the Contracting Authority for any loss or damage it has suffered (Art. 37.3).

20.18. Article 38 -Force majeure

There is no default or breach of contract if implementation is prevented by force majeure (Art. 38.1). Because of the seriousness of the consequences which arise, it is important that any notification of force majeure should be carefully examined to ensure that the event in question is genuinely outside the control of the parties. For example, strikes and lock-outs may be caused by some action of the Contractor, and would then not be considered as resulting from force majeure. Provisions of force majeure should, therefore, not be used as an escape from contractual obligations or to improperly terminate the contract. Any dispute between the parties arising from the application of this article should be resolved under the procedures for settlement of disputes.

If a situation of force majeure occurs, it is likely that at least one of the parties suffers some loss. The general principle here is that "the loss falls where it falls".

An additional case of force majeure has appeared as from 2013 in the General Conditions of contracts, and concerns the suspension of cooperation with the partner country. This new case allows for the protection of the interests of the Contractor who can terminate the contract in this way without putting itself in default towards a decentralised Contracting Authority with whom cooperation has been suspended.

As a result of Article 38.3, the Contracting Authority does not have the right to forfeit the performance guarantee, to demand the payment of liquidated damages or to terminate the contract for the Contractor's failure of implementation, to the extent that this failure is due to force majeure. Similarly, the Contractor is not entitled to interest on delayed payments or to other remedies arising from the Contracting Authority's failure to fulfil its contractual obligations, or to terminate the contract for failure of implementation, where these failures are due to force majeure. The procedure to be followed in the event of force majeure is set out in Article 38.4. It is initiated by either party giving prompt notice of the event in question. The Contractor is then required to make proposals on how to continue with implementation of the contract. The Contractor is entitled to any extra costs incurred as a result of the Project Manager's directions (Art. 38.5).

If the situation of force majeure continues for a period of 180 days, this gives either party the right to terminate, on giving 30-day notice (Art. 38.6).

20.19. Article 40 -Dispute settlement procedures

Although a party can decide to initiate the dispute settlement procedures of Article 40 of the General Conditions at a moment when the contract is still being implemented, these procedures may also begin once the contract has been completed, or after the termination of the contract by one of the parties. It should be noted that if there is a dispute which concerns an on-going contract, this does not relieve the Contractor of its responsibility to continue complying with its contractual obligations with due diligence.

20.19.1. Amicable settlement

When a dispute relating to the contract arises, the parties are required to make every effort to settle this dispute amicably. To this end, as an obligatory first step, Article 40.2 of the General Conditions requires one of the parties to notify the other party in writing of the dispute, stating its position and any solution it envisages, and requesting an amicable settlement. The other party is to respond to that request within 30 days with its position on the dispute. The general principle is that disputes are discussed by the parties and, whenever possible, resolved in an amicable way. The way of pursuing an amicable settlement may vary according to the internal administrative procedures of the Contracting Authority concerned, but it is usually of an informal nature. Nevertheless in order to ensure a certain efficiency and transparency, Article 40.2 of the General Conditions sets clear time limits to the attempt for amicable settlement. These time limits guarantee that a party cannot indefinitely prolong the amicable settlement negotiations in an attempt to gain time and without any genuine intention to come to a settlement. As such, the maximum time period for reaching an amicable settlement is fixed at 120 days, unless both parties agree otherwise. The amicable settlement procedure can be considered to have failed earlier if the other party did not agree to the request for an amicable settlement or if it did not respond to that request within 30 days.

20.19.2. Litigation

If the attempt to resolve the dispute through amicable settlement fails, each party can, by way of last resort, submit its claims to a court or initiate arbitration proceedings, as stipulated in the Special Conditions of the contract.

- Unlike with an amicable settlement, a court or arbitral tribunal may take a decision on the submitted claims even if the other party does not cooperate during the legal proceedings - for instance if one party does not attend proceedings, the court or tribunal may still make a decision. Unlike a proposal made during a conciliation procedure, the final decision taken by a court or arbitration tribunal will be binding. Whether a court or an arbitral tribunal will be competent and, if so, which court or arbitral tribunal, will be laid down in the Special Conditions of the contract. As a general rule, whenever the Commission is the Contracting Authority, the courts in Brussels are designated as being exclusively competent for the litigation. In the case of decentralised EDF-financed contracts, the Special Conditions will distinguish between disputes arising in a national contract and disputes arising in a transnational contract. Disputes arising from a national contract, i.e. a contract concluded with a national of the State of the Contracting Authority, are under Article 30(a) of Annex IV of the

Cotonou Agreement, to be settled in accordance with the national legislation of the ACP State concerned.

- Disputes arising from a transnational contract, i.e. a contract concluded with a Contractor who is not a national of the State of the Contracting Authority, are, unless the parties agree otherwise, to be settled by arbitration in accordance with the Procedural Rules adopted by the decision of the ACP-EC Council of Ministers. These Procedural Rules on Conciliation and Arbitration of Contracts Financed by the European Development Fund have been adopted by Decision N° 3/90 of the ACP-EC Council of Ministers of 29 March 1990 and published in the Official Journal L-382 of 31 December 1990.

In an EDF indirect transnational contract, parties further have the option to agree not to submit the dispute to arbitration, but instead to follow either the national legislation of the ACP State concerned or its established international practices. Such agreement can be reached at the start of the contract before any dispute has arisen, or later on. In any event, the agreement to deviate from recourse to arbitration in a transnational contract must be recorded in writing and signed by both parties.

If an internal administrative appeal procedure exists within the ACP State, the arbitration must be preceded by that procedure. The Contractor will only be in a position to initiate arbitration if internal administrative appeal procedures fail or are deemed to have failed (that is if there are no such procedures in the ACP State in question) as indicated in Article 4 of the EDF Procedural Rules.

Arbitration is a kind of private dispute resolution procedure in which the parties contractually agree to submit their dispute to an arbitral tribunal and accept the decision of this tribunal to be binding. If the parties agree, the arbitral tribunal can consist of one single arbitrator. If not, each party selects, on its own, one arbitrator, who then jointly nominate a third arbitrator who will act as chairman of the tribunal. The arbitration procedure is an adversarial procedure, with written statements exchanged between the parties and concluded with oral proceedings. No appeal is open against the final decision taken by the arbitral tribunal. It should be noted that arbitration procedures are not public, and are subject to payment - the cost shall be borne by the party requesting the arbitration. For more information on arbitration in EDF contracts, please see the brief overview of the rules of arbitration applicable to contracts financed by the EDF:

http://www.cc.cec/dgintranet/europeaid/contracts_finances/guides/prag/documents/edf_arbitration_mar10_fr.pdf

and the rules of procedure for conciliation and arbitration of contracts financed by the EDF:

http://ec.europa.eu/europeaid/work/procedures/legal_affairs/documents/edf_arbitration_fr.pdf

20.19.3. Conciliation

Once the dispute has arisen, the parties may agree to have recourse to conciliation by a third party.

The link below leads to a declaration of acceptance of a procedure of conciliation by the European Commission:

https://myintracomm.ec.europa.eu/dg/devco/finance-contracts-legal/legal-affairs/legal-disputes/Pages/court-actions-our-tasks.aspx

The main difference between conciliation and arbitration is that, unlike arbitration, the proposal made by a conciliator is not binding for the parties. They remain free to accept or reject any settlement-proposal made by the conciliator. Unlike the attempt for amicable settlement, the conciliation is not an obligatory step.

Often, conciliation is initiated when one of the parties has already submitted the dispute to a court or arbitral tribunal. Indeed, as a protective measure, a party may, for instance, already have lodged a request for arbitration to avoid such possibility to become time-barred. In that respect, one should bear in mind that Article 18 of the EDF procedural rules for conciliation and arbitration stipulates that the notice initiating arbitration shall be time-barred unless it is given not later than 90 days after the receipt of the decision closing the internal administrative proceedings taken in the ACP State. The conciliator will, as a general rule, request the parties to suspend arbitration proceedings pending conciliation.

Like under the amicable settlement procedure, conciliation starts with a party requesting the other party in writing to agree on an attempt to settle their dispute through conciliation by a third person. The other party must respond to this request within 30 days. The same safeguards as for the amicable settlement procedure govern the conciliation procedure: unless the parties agree otherwise, the maximum time period for reaching a settlement through conciliation is 120 days.

Should conciliation fail, the parties may refer their dispute to, or continue their dispute before, a court or arbitral tribunal, as specified in the Special Conditions. If so, nothing that has transpired in connection with the proceedings before the conciliator shall in any way affect the legal rights of any of the parties at the arbitration.

In a contract to which the Commission is not a party, the Commission can act as a conciliator, and if so, this will take the form of a good offices procedure. Such a good offices procedure can be conducted by the Delegation or by Headquarters, depending on the availability of resources and competences. In any event, it is crucial that both parties have confidence in the impartiality and capacity of the conciliator and fully accept his mission.

For more information on the good offices procedure, please consult the document which describes its steps and principles (and which should have been previously signed by the parties).

24. List of Annexes

C	Management Modes, Co-financing, Aid Effectiveness, Delegated Cooperation, Funding of Partner Countries and Cooperation with Other Special Entities	
C1	Special Entity Assessment Sheet	c1_special_entity_assessment_sheet_en .doc
C2a	Transfer Agreement: Special conditions	c2a_transfer_agr_sc_en.doc
C2b	Transfer Agreement: General conditions (annex II)	c2b_transfer_agr_gc_en.pdf
C3a	Financing Agreement - Special Conditions (Budget and EDF)	c3a_financing_agr_sc_en.doc
C3b	Financing Agreement - Annex II - General Conditions (Budget and EDF)	c3b_financing_agr_gc_en.pdf
C3c	Financing Agreement - Annex III - Report	c3c_financing_agr_report_en.doc
C3d	Financing Agreement - Annex IV - Management Declaration	c3d_financing_agr_manag_decl_en.doc
C4a	Contribution Agreement - Special Conditions	c4a_contribution_agr_sp_en.doc
C4b	Contribution Agreement: General Conditions (annex II)	c4b_contribution_agr_gc_en.pdf
C4c	Contribution Agreement: Financial identification form (annex IV)	c4c_contribution_agr_fif_en.pdf
C4d	Contribution Agreement - Payment request (annex V)	c4d_contribution_agr_request_en.doc
C4e	Template for One UN, Multi Partner Trust Funds (MPTF) and Joint Programming (JP)	c4e_contribution_agr_mdtf_jp_oneun_ en.doc
C5a	PAGoDA - Special Conditions Delegation Agreement	c5a_pagoda_sc_deleg_en.doc
C5b	PAGoDA - Special Conditions PA Grant Agreement	c5b_pagoda_sc_grant_en.doc
C5c	PAGoDA - General Conditions (Annex II)	c5c_pagoda_gc_en.pdf
C5d	PAGoDA - Financial Identification Form (Annex IV)	c5d_pagoda_fif_en.pdf

C5e	PAGoDA - Request for Payment (Annex V)	c5e_pagoda_request_en.doc
C5f	PAGoDA - Management Declaration (Annex VII)	c5f_pagoda_manag_decl_en.doc
C5g	PAGoDA - Communication and Visibility Plan (example)	c5g_pagoda_comm_visib_plan_en.doc
C5h	PAGoDA Manual	c5h_pagoda_manual_en.pdf
C6a	Note on the Procedure for the examination of requests for pillar assessments	c6a_note_procedure_requests_pillar_assess_en.pdf
C6b	Procedure for the examination of requests for pillar assessments by organisations wishing to work with the Commission under Indirect Management (Annex I)	c6b_procedure_requests_pillar_assess_IM_en.pdf
C6c	Application form (Annex II)	c6c_application_form_en.pdf
C7a	Delegation Agreement - Special conditions	c7a_delegation_agr_sp_en.doc
C7b	Delegation Agreement - General conditions (annex II)	c7b_delegation_agr_gc_en.pdf
C7c	Delegation Agreement - Budget (annex III)	c7c_delegation_agr_budget_en.doc
C7d	Delegation Agreement - Provisions on the central exclusion database (annex IV)	c7d_delegation_agr_database_en.doc
C7e	Delegation Agreement - Communication of information to the central exclusion database (annex V)	c7e_delegation_agr_comm_database_en.pdf
C7f	Delegation Agreement - Financial identification fiche (annex VI)	c7f_delegation_agr_fif_en.pdf
C7g	Delegation Agreement - Request for payment (annex VII)	c7g_delegation_agr_request_en.doc
C8a	IMDA - Special conditions	c8a_imda_sc_en.doc
C8b	IMDA - General conditions	c8b_imda_gc_en.pdf
C8c	Financial Identification Form	c8c_imda_agr_fif_en.pdf
C8d	IMDA - Request for Payment	c8d_imda_agr_request_en.doc
C8e	IMDA - Management Declaration	c8e_imda_manage_decl_en.doc

C8f	Communication of information to the central exclusion database (annex V)	c8f_comm_database_en.pdf
C8g	Arrangements for Management Declarations and Audit or Control Opinions	c8g_arrang_manag_decl_opinions_en.doc